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

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Date of decision: 13 May, 2025

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CRL.L.P. 630/2017

THE STATE GOVT OF NCT OF DELHI

.....Petitioner

Through: Mr. Utkarsh, APP for the State with
SI Pinki, PS Kanjhawala.

versus

OM DEVI & ANR

.....Respondents

Through: Mr. Rajiv Tehlan, Mr. Abhishek
Rana, Ms. Poonam, Mr. Jitendra Rana
and Ms. Savita, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 17896/2017 (condonation of delay)

1. Application under Section 5 of the Limitation Act read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.PC'*), has been filed on behalf of the Petitioner/State for condoning the delay in filing the accompanying Leave to Appeal.
2. It is stated in the Application and in the interest of justice, the delay of 187 days in filing the accompanying Leave to Appeal be condoned and the Application is allowed.
3. For the reasons stated in the Application, the delay is condoned and the Application is disposed of accordingly.



CRL.L.P. 630/2017:

4. Criminal Leave Petition under Section 378(3) Cr.P.C. has been filed on behalf of the Petitioner/State against the Order dated 27.01.2017 of the Ld. ASJ, Fast Track Court, North/West District, Rohini, Delhi in FIR No. 266/2012 under Section 306/379/34 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*) registered at Police Station Kanjhawala vide which the Respondents, Om Devi and Amit Malik have been acquitted.

5. It is submitted that there is a testimony of the wife of the deceased, HC Tej Pal and recovery of ATM Card from the Respondent No. 2, Amit Malik. Hence, the Leave to Appeal has been sought.

6. For the reasons stated in the Leave Petition, the same is allowed.

Crl. A...../2025 (to be numbered)

7. Appeal under Section 378(1) Cr.P.C. has been filed on behalf of the State against the Impugned Judgment dated 27.01.2017 of Ld. Sessions Judge, Fast Track Court, Delhi, whereby the Respondents have been acquitted for the offences under Section 306/379/34 of IPC in FIR No. 266/2012 dated 02.12.2012, Police Station Kanjhawala.

8. ***Facts in brief*** are that when HC Tej Pal (deceased) posted at PS Kanjhawala on emergency duty on 02.12.2012, failed to respond to the telephone calls of the Duty Officer, Constable Ashok Kumar was asked ascertain his whereabouts. On reaching the IO room of first floor of building of PS Kanjhawala, HC Tej Pal was found lying dead having gun shot on his right temple.

9. DD No.27-A was registered and investigation was carried out by SI Naresh Kumar. On search, one suicide note, one mobile phone was



recovered from the right pocket of the shirt of the deceased. As per the *suicide note*, Respondent No.1 Om Devi was in relationship with deceased since 1991. Thereafter, she started blackmailing him and, in the end, both the Respondents tortured him in such a manner that he was left with no option but to commit suicide, for which both the Respondents i.e., Om Devi and Amit Malik (her son) were held responsible.

10. After completion of investigation, the *Charge Sheet under Section 306/379/34 IPC* was filed against Respondent No.1, Om Devi and Section 306/34 against Respondent No.2, Amit Malik.

11. The cognizance was taken by the Ld. MM and thereafter *Charges under Section 306/34 IPC were framed by the Ld. ASJ against both the Respondents and also charge under Section 379 IPC was framed against the Respondent No.1 Om Devi.*

12. The Prosecution examined 16 witnesses, in support of its case. The statements of both the Respondents were recorded under **Section 313 whereby they pleaded innocence.**

13. The Ld. ASJ vide Impugned Judgment dated 27.01.2017 acquitted both the Respondents.

14. *Aggrieved, the State has preferred the present appeal.*

15. The **grounds** to challenge the Impugned Judgment of acquittal dated 27.01.2017, are that the testimony of material witnesses has not been considered correctly while giving benefit of doubt to the Respondents. It has not been appreciated that *Suicide Note* contains specific allegations against the Respondents with regard to demand of money, blackmail and threats of dire consequences which resulted not only in provocation, but also instigation of the deceased to commit suicide. It has not been considered that



the conduct of the Respondents created immense disturbance and psychological imbalance whereby any normal and reasonable person would have been compelled to commit suicide on account of such behaviour, act, conduct and omission. The Ld. ASJ has wrongly ignored the *Suicide Note*. It has been wrongly concluded that the *Suicide Note* only talks about demand of money, while the other aspects as stated therein have been overlooked.

16. **PW2 Indira (wife of the deceased)** had categorically deposed that her husband, HC Tej Pal used to remain upset and on her asking he had told her that the respondents No.1, Om Devi and her son have been demanding money from him and also threatening that in case the money was not paid, she would get him removed from the service and implicate him falsely.

17. PW15 Dr. Virender Singh proved the *FSL Report* in regard to the handwriting of the deceased which confirms that the *Suicide Note* was written by the deceased, HC Tej Pal.

18. The *Call Details Record* of the mobile phone of the deceased, HC Tej Pal and the Respondent No.1, Om Devi have been overlooked. The Respondent No.2, Amit Malik, son of the Respondent No.1 Om Devi who had persuaded her to get Rs.4,00,000/- from the deceased, HC Tej Pal.

19. It has not been considered that the suicide was not only on account of demand of money by the respondents, but also based on blackmailing, threatening etc. which amounts to instigation, provocation and abetment. It has been erroneously concluded that there was no evidence to prove extortion or blackmailing from the suicide note. In fact, the deceased had been exploited by the Respondents.

20. Also, the ATM card of the deceased, HC Tej Pal was stolen by Respondent No.1, Om Devi which was recovered from her possession.



21. The Impugned Judgment dated 27.01.2017 is not inconsonance with the fact. Therefore, *it is submitted that the Impugned Judgment dated 27.01.2017 be set aside and the respondents be convicted.*

22. ***Reply/Counter Affidavit has been filed on behalf of the Respondents No.1 and 2*** wherein *preliminary objection* is taken that the Appeal has been filed on behalf of the State through Sh. M.N. Tiwari, the then DCP Outer District, Delhi Police, and no document has been placed on record to show that he was authorized to file the Complaint. There has been violation of mandatory requirement of Section 297(2) Cr.P.C. making the Appeal not maintainable.

23. ***The Respondents No.1&2*** have asserted that the Appellant has tried to misguide by deliberately not mentioning and discussing the cross-examination of the Prosecution Witnesses. Pertinently, neither SHO Inspector Arvind Kumar nor the Complainant SI Naresh Kumar, have been examined by the Prosecution nor is DD No.27-A exhibited during the trial.

24. It is further submitted that the testimony of PW2 Indira (wife of the deceased) is in regard to her husband being upset on account of persistent demands of money being made by the respondents, which is essentially based on hearsay. From her testimony, no offence under Section 107 IPC is made out.

25. ***PW3 Yogesh Tripathi and PW4 Israr Babu*** have respectively proved the Call Detail Records of the Respondent No.1 and the deceased. PW4 Israr Babu, Alternate Nodal Officer has proved the *Call Detail Records* of the deceased. He also admitted that he had no knowledge of this case including the CDRs. The conversations having not been denied.

26. ***However, PW3 Yogesh Tripathi, Nodal Officer*** who has proved the



CDR records, has produced the Certificate under Section 65B Indian Evidence Act, but he is not the person who had taken out the printouts of CDR. He is alternate Nodal Officer and had admitted in his cross examination that signatures on Ex.PW-3/D and Ex.PW3/E have not been made in his presence. He also admitted that he did not have any access to the server or the data base. Section 65B Certificate has not been proved and is therefore, of no help to the Prosecution. The conversations recorded between the Respondent No.1 and deceased, HC Tej Pal are not denied, but it is submitted that these conversations do not prove the offence of abetment.

27. *PW12 Prince Tyagi, Sales Officer, Axis Bank had produced the bank account statement of the deceased, HC Tej Pal and the Respondent No.1, Om Devi but mere production of this document cannot in any way prove its contents. The testimony of this witness also does not help the case of the Prosecution.*

28. *PW14 Dr. N.P. Waghmare, Ballistic Expert had examined the pistol used by the deceased, HC Tej Pal for committing suicide. His Report merely identified the pistol with which the deceased, HC Tej Pal had committed suicide, but this pistol has in no manner connected with the Respondents.*

29. *In the end, it is contended that the testimony of all the Prosecution Witnesses even if taken together, do not prove any offence against the Respondents, as has been rightly held by the Ld. ASJ.*

30. *It is submitted that there is no merit in the present Appeal which is liable to be dismissed.*

31. **Submissions heard and record perused.**

32. The admitted facts are that HC Tej Pal, the deceased and the Respondent No.1 Om Devi were in Delhi Police and they both remained



posted together during their service and knew each other well since 1991. It is further not in dispute that HC Tej Pal committed suicide on 02.12.2012 by shooting himself with his officially allotted pistol in the premises of Police Station, Kanjhawala.

33. **PW14 Dr. N.P. Waghmare** deposed that the bullet had been fired from a very close range and had made an exit. Empty cartridge was recovered from the spot. On examination, it was found that the empty cartridge had been fired from the official pistol of the deceased, HC Tej Pal. It is therefore proved and also not denied that the deceased, HC Tej Pal had committed suicide by shooting himself with his official weapon.

34. The main question is to ascertain the reason why the suicide was committed by the deceased. The **first pertinent document** is the *Suicide Note*Ex.P1 which was admittedly written in the handwriting of the deceased and had been recovered from his shirt pocket. He, in his Suicide Note, had detailed that he had been posted at PTS Jharonda Kalan, Delhi since 1991 at which time the Respondent No.1 was also posted there and came in his contact. She from the day she met the deceased, started pressurizing him for money till date (i.e. 02.12.2012) he had been giving her money from his account. Rs. 2,00,000/- were given from his account while Rs. 1,00,000 had been taken out from his GPF account. When she constructed a house in Shrinagar Colony, he had given Rs.45,000/- at that time. Thereafter, in the year 2011, she was caught stealing electricity and he had given her Rs.50,000/- to pay the fine of Rs.47,300/- imposed upon her by the Electricity Department. Her son Amit Malik, Respondent No.2 who had become a youth, was taking drug injections and had been pressurizing his mother, Respondent No.1 for Rs. 4,00,000/- for his marriage which the



deceased, HC Tej Pal gave after withdrawing it from his GPF account. On one day he had caught the Respondent No.1, Om Devi in Sector 9, Bahadurgarh with HC Sham Sunder Rathi. Next day she called the deceased, HC Tej Pal to Bahadurgarh and informed that her son Amit, Respondent No.2 was making a demand of Rs.5,000/-. He had no money and he took out Rs.5,000/- by using his ATM card at that time, his card and one gold ring was stolen by Respondent No.1 from his purse. Subsequently, he came to know that Rs.4,00,000/- had been withdrawn from his GPF account and he found later that an amount of Rs.2,00,000/- had been withdrawn through the ATM, while her son Respondent No.2, Amit Malik was with her. Now both Respondents are harassing him and he is frustrated. They both are compelling him to die and therefore, he is committing suicide for which the two respondents are responsible.

35. The only averments which emerged from the *Suicide Note* is that the deceased, HC Tej Pal and Om Devi, Respondent No.1 had developed an acquaintance. The deceased, HC Tej Pal had since 1991 till 2012 i.e. 21 years had given a total sum of Rs.6,00,000/- to the Respondent No.1, Om Devi. It is his own assertion that he was well acquainted with the Respondent No.1, Om Devi who was a widow lady. The money may have been given on different occasions, but there is no evidence whatsoever, to show that he was being blackmailed, harassed or compelled under any circumstances created by the Respondent No.1 or to pay the said amounts.

36. Furthermore, giving of about Rs.6,00,000/- over a period of 21 years in the aforesaid situation of deceased being friends with Respondent No.1, cannot be termed as extortion. It can also not be overlooked that these amounts have been stated to be given at different times but there is no



mention of any specific dates or even the years when this money has been given from time to time.

37. The Prosecution had examined **PW2 Indira** (wife of the deceased) who had deposed that her husband, HC Tej Pal used to remain upset and when she had asked for reason, he had told that Respondent No.1, Om Devi and her son have been demanding money. According to her in November, 2012 her husband, HC Tej Pal told her that a sum of Rs.4,00,000/- was to be arranged for the marriage of Amit Malik and that he was upset. He had told that the Respondent No.1, had threatened him that in case the amount was not arranged or paid, she would insult him in the Society and would get him removed from the service and implicate him in the case. Therefore, he withdrew Rs.4,00,000/- from his GPF account. She also deposed that she was informed by her husband, HC Tej Pal that his ATM card and gold ring was stolen by Respondent No.1, Om Devi. She was cross examined at length by the Counsel or the Respondents wherein she admitted that prior to 2012 her husband, HC Tej Pal never stated about any quarrel with anyone. She had never met the Respondents prior to the death of her husband, HC Tej Pal. She was unable to give the date, month or year when she was informed by the deceased about the alleged demands by the Respondent No.1. She was not aware as to when on previous occasions her husband, HC Tej Pal had paid money to Respondent No.1, Om Devi. She also did not know the reasons given by her husband, HC Tej Pal for withdrawal of money from GPF. She did not know as to when her husband, HC Tej Pal told her about the alleged threat. She was not even aware if her husband, HC Tej Pal ever made any report about the alleged threat made by the Respondents.

38. From the testimony of PW2, it is established that during his lifetime,



apparently the deceased had never informed her about anything. It is only after his demise that this entire evidence of alleged demand and threat by the Respondents has come to the knowledge of the witness about which she deposed.

39. Pertinently the allegations of threat as stated by the PW2, Indra never found any mention in the Suicide Note Ex. P1 in case the deceased, HC Tej Pal was being harassed, induced, blackmailed or pressurized there was nothing which prevent him from stating these facts especially when he decided to pen down the reasons for his demise in his *Suicide Note*. Furthermore, the allegation was that Rs.4,00,000/- had been deposited in the account of deceased on 22.11.2012 and a total sum of Rs.2,00,000/- had been withdrawn from his bank account through different ATMs. The Bank Statement reflected 17 entries from 25.11.2012 to 28.11.2012 whereby Rs.20,000/-had been taken out vide every entry.

40. To corroborate the taking out of money from time to time by the deceased, the prosecution had relied upon the Bank Statements Ex.PW 12/B and PW 12/C. The Ld. ASJ referred to these Bank Statements to conclude that though withdrawals were made different ATM cards as mentioned therein, but there was nothing to show that these were unauthorized withdrawals made by Respondent No.1, Om Devi alone.

41. In order to prove an offence ***under S. 107 IPC of abetment***, it is required to be established any of the following ingredients i.e., *the person had been instigated to do a thing or to engage with one or more persons in any conspiracy to do that act or intentionally aids, by act or illegal omission in doing the thing*. The offence of abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107



IPC. *The instigation* means to provoke, incite, urge or to bring about a persuasion to do anything.

42. In the context of Section 306 IPC which penalizes the *Abetment of Suicide*, what emerges is what the deceased intended to do and not what he felt. Ingredients of abetment to suicide would be satisfied only if there is direct encouragement or incitement of the deceased leaving him with no other option but to commit suicide. The conduct should be such as it creates immense disturbance and results in psychological imbalance which in any normal human being would compel him to commit suicide. The Court has to be careful and circumspect in assessing the facts of each case to ascertain if there was any abetment to suicide.

43. In Kartar Singh & Ors. Vs. CBI 131 (2006) DLT 643 Delhi, the Apex Court explained that abetment involves a mental process of instigating a person or intentionally aiding that person to do a particular act.

44. Likewise, in Vivek Kumar Jain Vs. State of MP 2014 SCC Online MP 7848, the accused had made demands from the person who committed suicide who had left a Suicide Note, as in the present case. It was concluded that from the facts, no case of abetment was made out.

45. In Santosh Nathumal Goenka Vs. Unknown (Crl. Appl. No.2553/2009 decided on 06.10.2009 by Bombay High Court, Nagpur Bench) while considering the similar facts, it was held that suicide cannot be considered as an answer to persistent demand. Even if Suicide Note is left, if there is no reference of persistent demand of money, the accused cannot be said to have committed an act or omission or instigated or abetted under Section 306 IPC.

46. In Chitresh Kumar Chopra v. State 2009 (11) SCALE 24, similar



facts of a suicide on account of demand of money, was considered. It was observed by the Apex Court that every individual has his own idea of self-esteem and self-respect. It is impossible to lay down any straitjacket formula in dealing with such cases and each must be decided on its own facts and circumstances. *It was further observed that mere demand of money could not prompt any reasonable man to commit suicide.*

47. ***The facts in hand may thus, be considered. The only facts mentioned in the Suicide Note*** is about Rs.6,00,000/- being given to the Respondent No.1, Om Devi with whom the deceased had acquaintance and relationship since 1991 till 2012 i.e. a period of 21 years without there being any other evidence of any kind of pressure, blackmailing or abuse. In these circumstances, it cannot be termed as abetment of the deceased, HC Tej Pal to commit suicide, by the Respondents. ***No offence under Section 306 IPC is proved as has been rightly held by the Ld. ASJ.***

48. The only case against Amit Malik, Respondent No.2 is the allegations made in the suicide note Ex.P1. The deceased had merely stated that Amit Malik s/o Om Devi, Respondent No.1 had started taking drugs and injections and used to pressurize his mother to get Rs.4,00,000/- for his marriage. The deceased had therefore, taken out Rs.4,00,000/- from his GPF Account. However, even if such assertion is admitted, it merely shows that Amit Malik, Respondent No.2 had told his mother that he needed Rs.4,00,000/- for his marriage. But this cannot constitute abetment to Om Devi to demand money and by no interpretation it can be said that Amit Malik abetted the deceased directly or through his mother. No offence of abetment to suicide is made out against Amit Malik, Respondent No.2 The other allegation made against Om Devi, Respondent No.1 is that she had



committed theft of ATM Card of the deceased.

49. The Prosecution had claimed that the amounts had been withdrawn by the Respondent No.1, Om Devi and her son Respondent No.2, Amit Malik had accompanied her on those occasions. The CCTV footage of Axis Bank situated near Ashok Cinema, Rohtak had been provided of 25.11.2012 from 11.00 am to 5.00 PM, but the same has not been proved by the Prosecution. Moreover, Certificate under Section 65B Act has also not been filed along with the CCTV footage.

50. The Ld. ASJ has rightly held that CCTV footage not having been proved by the prosecution and the perusal of the CCTV footage did not assist the case of the Prosecution in any manner as the faces in the footage were totally unclear and blurred and was difficult to decipher the identity of the persons from the said footage.

51. Furthermore, there is nothing on record to reflect that this ATM card of the deceased had allegedly been stolen by the Respondent No.1, Om Devi or she had used it unauthorizedly. Mere recovery of ATM card of the deceased from the Respondent No.1, Om Devi cannot lead to an inference of threat especially when they both had intimate relationship for over a period of 21 years and the deceased; HC Tej Pal had been giving her monetary help as and when it was required.

52. Also, it was the recovery of the ATM card from the Respondent No.1, Om Devi cannot be considered as a proof beyond reasonable doubt, as the chances of ATM card having been given to her by the deceased during his lifetime considering their relationship, cannot be discounted. The Ld. ASJ has rightly held ***that no offence under Section 379 IPC has been proved.***



Conclusion:

53. In the light of above discussion, it is concluded that the Respondents have been rightly acquitted for the offences under S.306/34 IPC as well as respondent No.1 under S.379 IPC. Ld. ASJ in his reasoned Judgment dated 27.01.2017 has rightly acquitted the Respondents.

54. There is no merit in the present Appeal which is hereby, dismissed. The pending Applications are disposed of accordingly.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 13, 2025

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