

Neeraj Gupta Vs. State

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Court : Delhi

Decided On : Jul-18-2006

Reported in : 132(2006)DLT137; 2006(90)DRJ725

Judge : Badar Durrez Ahmed, J.

Acts : Indian Penal Code (IPC) - Sections 107 and 306

Appeal No. : Crl. Rev. P. No. 863/2005 and Crl. M.A. 11799/05

Appellant : Neeraj Gupta

Respondent : State

Advocate for Def. : V.K. Malik, Adv.

Advocate for Pet/Ap. : Vikas Arora, Adv

Disposition : Appeal allowed

Judgement :

Badar Durrez Ahmed, J.

1. This Revision Petition is directed against the order on charge dated 14.10.2005 passed by the learned Additional Sessions Judge against the petitioner for having committed an offence punishable under Section 306 of the Indian Penal Code. The charge against the petitioner is that on 22.7.2004 at 1.30 p.m. at the house of

Satpal, Harijan Basti, Rangpuri, the petitioner had abetted in the suicide committed by Vivekananda Pandey and thereby committed an offense under Section 306 IPC.

2. The brief facts as indicated in the charge sheet are that on 22.7.2004 on receiving DD No. 48A, S.I. Ziley Singh along with constable Dhan Singh went to the spot at the house of Satpal at Ranagpuri, where one man had committed suicide whose name was found to be Vivekanand Pandey. It is indicated in the charge sheet that on searching the body of the dead man one suicide note was found in which the present petitioner (Neeraj Gupta) was mentioned as being responsible for the suicide. On 22.7.2004, the deceased Vivekanand Pandey's wife did not give any statement as she was in a state of shock. The Postmortem examination was conducted on 23.3.2004. On 24.7.2005 Smt. Mithlesh Pandey, wife of the deceased, came to the police station and got her statement recorded. In her statement, it is indicated that she and her husband, the late Vivekanand Pandey, knew Neeraj Gupta for the last about two years and that Neeraj Gupta use to visit their house. He allegedly used to tell her husband that he would get a hotel for him and also construct a house and requested Vivekanand Pandey to stop the work of gas supply. It is further stated by Smt Mithlesh Pandey that her husband had taken loans from various people and gave the money to Neeraj Gupta for the setting up of the said hotel and for the construction of a house. It is further stated by her that Neeraj Gupta was unable to get the hotel opened for her husband. The creditors from whom her husband had taken loan use to come to their house demanding the return of their money. She stated that her husband was very upset as, on the one hand, Neeraj Gupta had refused to return the money which was taken by him and, on the other hand, there was a constant pressure of the creditors demanding money from her husband again and again. Her husband became extremely upset and was under depression for several days and ultimately committed suicide on 22.7.2004.

3. The suicide note recovered by the police in this case also indicates that the deceased Vivekanand Pandey was upset with the present petitioner. The suicide note (English Translation) is to the following effect:

To, The SHO It is requested with folded hands that Neeraj Gupta is the reason for my death whose shop is near the Aggarwal Sweet and phone No. is 26788585. Neeraj Gupta is responsible for my disaster. Neeraj Gupta must be made to pay to all those persons from whom I had taken loan. If he does not pay then he should be hanged like me. I have a small daughter and her mother. There is no one to look after them. And SHO as you desire. Vivekanand Pandey 22.7.04.

4. The learned Counsel for the petitioner pointed out that the transaction between the present petitioner and the deceased Vivekanand Pandey was a commercial transaction. He submitted that at best the hopes and aspirations of the deceased Vivekanand Pandey could be said to have disappeared inasmuch as Neeraj Gupta was unable to set up the hotel which he had allegedly promised to do. He submitted that this would not fall within the four corners of Section 306 IPC which has to be read along with Section 107 IPC which defines abetment. He submitted that there is no element of means read which could be attributed to the present petitioner so as to suggest that the petitioner incited, goaded, provoked, urged or encouraged the deceased Vivekanand to commit suicide. There is, of course, no allegation with regard to any conspiracy or of aiding in the commission of suicide. He submitted that the conduct of Neeraj Gupta as disclosed by the prosecution case is that he did not fulfill the promise of setting up a hotel for the deceased Vivekanand Pandey and that he was unable to do so and also that he refused to pay back the alleged sums of money extended by Vivekanand Pandey to Neeraj Gupta. He submitted that it was the pressure of the creditors on the one hand demanding repayment of their loans from Vivekanand Pandey and the inability of the present petitioner on the other hand to set up the hotel and also his refusal to pay back the amount to Vivekanand Pandey which resulted in the deceased Vivekanand Pandey getting extremely depressed and ultimately committing suicide. It does not in any way disclose that the present petitioner had any idea that his conduct would be driving the petitioner to commit suicide. In fact, the learned Counsel for the petitioner submits that there is no allegation of any element of means read insofar as the present petitioner is concerned. He relied upon a decision of the learned Single Judge of the High Court of Madhya Pradesh in the case of Vedprakash Bhaiji v. State of Madhya Pradesh , which was also a case of abetment to commit suicide. In that case the prosecution case prima facie

revealed that the accused persons intimidated the deceased that if he did not repay the loan advanced to him, he would have to face dire consequences. Yet, the Court came to the conclusion that the suicide committed by the deceased could not be said to have been a result of provocation, incitement, urging or encouragement on behalf of the accused persons so as to constitute an offence under Section 306. The Court observed that a person is said to instigate another to an act when he actively suggests or stimulates him to do the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word instigate means to goad or urge forward or to provoke, incite, urge or encourage to do an act.

5. These principles are quite well settled as would be clear from the following decisions:

i) Hira Lal Jain v. State 2000 (2) JCC 478;

ii) Netai Dutt v. State of West Bengal : 2005 CriLJ1737 ;

iii) Sanju @ Sanjay Singh Sengar v. State of Madhya Pradesh 2002 III AD SC 1.

6. The learned Counsel for the State supported the order on charge as well as the charge framed for the reasons indicated therein.

7. However, I am of the view that this is a case which cannot be covered under Section 306 IPC even if the prosecution case is believed in its entirety. This is because there is no active engagement on behalf of the petitioner to encourage or incite the deceased to commit suicide. The petitioner's role is that after taking money he was unable to set up the hotel for the deceased. The further role attributed to him was that he refused to pay back the money to the deceased. It may be suggested that the petitioner betrayed the confidence and trust reposed in him by Vivekanand Pandey. But, it cannot be said that the petitioner incited or urged or goaded or coaxed or cajoled Vivekanand Pandey to commit suicide. In fact there is no material on record to suggest that the petitioner was even aware that Vivekanand Pandey was harbouring suicidal thoughts. The crucial element of means read is not even alleged in the prosecution's case. The acts attributed to

the petitioner cannot, in my view, amount to instigation under Section 107 of the Indian Penal Code. Consequently, there being no abetment, the offence under Section 306 IPC is not made out against the petitioner.

8. The impugned order is set aside and the petitioner is discharged of the offence under Section 306 IPC.

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