

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

+ CRL.REV.P. 757/2002

Reserved on : May 18, 2007

Pronounced on : May 31, 2007

SANJAY SINGHAL & ANR. Petitioner
Through Mr. D.C. Mathur, Sr. Advocate with
with Mr. Vikram S. Panwar, Advocate

versus

STATE Respondent
Through Mr. Pawan Sharma, APP for the State.
Mr. Vikas Pahwa, Advocate for the complainant.

CORAM:

Mr. Justice S. Ravindra Bhat

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

Mr. Justice S. Ravindra Bhat

1. The present Revision challenges the order on charge, dated 12-2-2002 passed by the Additional Sessions Judge (hereafter "the trial court") charging the petitioner accused of having committed offences punishable under sections 348/306/34 IPC.

2. The Facts necessary to decide this present petition are that one Umesh Garg, the complainant is elder brother of Deepak Garg (hereafter referred to as "the deceased"). The deceased was at that time employed as a Senior Manager

(Marketing) in the company of Sanjay Singhal (here after referred to as the Accused No.2) and Neeraj Singhal (hereafter referred to as Accused No.3). The complainant was the General Manager (Commercial) in that company. The deceased was allegedly called by the accused persons on 16.06.1999 at about 4 p.m. to their office at Sahibabad to enquire into allegations about his having taken commission from someone for the sale of goods. He was allegedly beaten up and interrogated till 9 p.m. He was allegedly stripped naked and chillis were inserted into his anus. Thereafter, the accused persons allegedly brought the deceased and complainant to their Nehru Place Office. The beatings and interrogation continued despite the deceased admitting that he received commission of Rs. 2 lakhs.

3. It was alleged that the accused persons were insisting that deceased had received Rs. 20 lakhs and they made him sign some documents to such effect. The Accused No.2 and 3 left their Nehru Place Office, at about 2-2.30 AM, with instructions to Accused B.K. Gupta and other officials of the company i.e. Bhushan Strips to detain the deceased and complainant in their office and that they would join again at 5 A.M. The alleged interrogation was continued by accused B.K. Gupta and at about 5 A.M. the deceased jumped from the window of the Conference Hall of the Nehru Place Office. He was then taken to AIIMS Hospital where he succumbed to his injuries.

4. Mr. D.C. Mathur, learned senior counsel urged that there was no instigation

as contemplated under Sec. 306 IPC from the Petitioners to either encourage or incite the deceased to commit suicide. He further argued that the petitioners had left the place two hours before the alleged incident. He urged that other people as well as the complainant interrogated the deceased. He argued that it is no statement in the FIR that the petitioners threatened the deceased before they left the place. The Ld. Counsel argued that the action of the deceased could be the result of frustration or shame on having been exposed.

5. The post mortem report of the deceased records the nature of death as fall from height and injuries therefrom being antemortem in nature. Counsel submitted that there was no warrant to suspect the petitioners; admittedly the complainant, brother of the deceased felt ashamed of his role; even he was involved in the interrogation of the deceased. The accused admittedly were not present when the incident could have taken place; all the witnesses consistently deposed that they left the place at about 2 AM. In the circumstances, the court erred in charging them of the offences.

6. Counsel submitted that apart from being purely conjectural, the entire story of the prosecution was cooked up and fabricated. No eyewitnesses could be said to have seen the alleged incident; certainly there was no covert or overt circumstances linking the petitioner to the incident or the deceased.

7. Learned Counsel contended that on overview of all materials, the question

of abatement of suicide and the having regard to the standard of proof, in criminal cases, as are laid down by Supreme Court in its various judgments had not been measured up in the present proceedings. The charges were liable to be quashed or set aside. Reliance was placed on the ruling of the Supreme Court in *Sanju-vs-State of Madhya Pradesh* AIR 2002 SC1998, to say that the expression “abet” denotes incitement or urging to do some drastic or inadvisable action or to stimulate or incite. According to the Supreme Court presence of a mental state or *mensrea*, therefore, was necessary concomitant of instigation. The court had noted that it is common knowledge that words used in a quarrel or in a spur of the moment cannot be taken to be uttered with any intention. Such words are said in a fit of anger and emotion. Learned Counsel also relied upon the judgment of the Supreme Court in the *State of Haryana -vs- Surender Kumar* 2000 SCC (Cri) 1378 for a similar proposition.

8. Counsel submitted that taken together, the testimony of all the prosecution witnesses showed serious infirmities and deficiencies; the allegation about the petitioners being instrumental in the cruelty inflicted on the deceased and their conduct, in view of statements recorded in that regard, were unreliable. It was submitted that there was no instigation on the part of the accused person as the act of deceased could be an act of frustration or shame on having been exposed. It was argued that the complainant himself was questioning the deceased and that the case

is squarely covered within the four corners of the decision in *Roop Kishore Madan Vs. State*, 2001(1) JCC (Delhi), 75. It was submitted that the trial court failed to see this aspect, and erred in distinguishing that authority.

9. It was submitted that there was no eyewitness who saw how precisely the accused fell or jumped down; the whole story of his suicide was conjectural; the incident could have been the result of a homicide, or worse, murder. The court erred in "fairly imagining" that the deceased committed suicide, and at the instigation or incitement of petitioners.

10. Mr. Pawan Sharma, learned counsel for the state, submitted that the allegations showed a continuous torture of deceased Deepak Garg for a relatively short span. His torture started at about 4 p.m. And continued till 2/2.30a.m.by all the accused persons. At the time of leaving the office, the petitioners threatened the deceased that they would come again at 5 AM. and directed that both the brothers be locked till then. The beatings and questioning continued even thereafter and the deceased ultimately committed suicide at about 5 AM. Learned counsel submitted that the discrepancies, sought to be pointed out, were by no means so fundamental as to undermine the strong suspicion of the petitioners' abetting the suicide. They were with the deceased continuously for more than 8 hours; at their behest, he was shifted from the Sahibabad office to Nehru Place. They were present when all the beatings and acts of cruelty took place. Hence, they

could not claim immunity from being charged.

11. The above facts show that according to the prosecution on that fateful day, the deceased was questioned in detail about his alleged pocketing some commission; the petitioners, his employers, kept him, and instructed others to inflict physical torture on him. It was also alleged by the complainant, the deceased's brother, that they too acted in the cruelty inflicted upon the deceased.

12. I have seen the trial court records. The counsel for petitioner is correct when he submitted that the allegation, particularly the one relating to stuffing chillis, was not supported in the post mortem or medical report. Yet, that alone is insufficient to completely knock out the prosecution story, or entitle this court to discard the allegations. Apart from the testimony of Umesh Garg, the complainant, two others, i.e V.K. Sharma, and Hardev Chand Verma deposed. In fact, the former stated that though the role of V.K. Gupta was prominent, the petitioners also participated in the cruelty and torture of the deceased. This, according to them, continued from 4 PM, and later, after 9:30 PM at the Nehru Place office. The chowkidar, Hari Chand also corroborated to the extent that he spoke about sounds of continuous beatings.

13. The above discussion shows that although no one witnessed the act of the deceased, yet many of the witnesses testified about the involvement of the petitioners, employers of the deceased, in his prolonged questioning, his detention, shifting to Nehru Place, and participation in beating him. They left the premises at 2:30 after giving instructions to those they left behind, including Gupta, who played a prominent part. Thus, their position as employers, and the dominant role they played, are strong circumstantial pointers to their *prima facie* involvement in the offence, and grave suspicion about their having committed the offence. I am unpersuaded to accept the submission that the statement against the petitioners are vague, or that the materials disclose two possible views, one of which can exonerate them. The circumstances are sufficiently strong to raise a grave suspicion about their having committed the offence, through their actions.

14. It is well settled that the fact sifting exercise required to be undertaken by the court framing charges, has to see the broad contours of the materials; it should not probe meticulously and make an in-depth analysis of the evidence; such exercise would amount to a pre-trial appraisal of facts, which is not warranted. On a broad overview of the facts, the trial court felt that the evidence was sufficient to show that the petitioners, *prima facie*, were involved and there was grave suspicion about their having committed the offences.

15. In view of the above findings, the revision petition must fail; it is accordingly dismissed.

DATED: 31 st May, 2007

S. RAVINDRA BHAT, J