
(2022) 08 CAL CK 0012
In the Calcutta High Court
Case No : Criminal Appeal No. 431 Of 2001

Dipak Chandra Roy

APPELLANT

Vs

State Of West Bengal.

RESPONDENT

Date of Decision : 03-08-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 161, 374(2)
Indian Penal Code, 1860 — Section 107, 306, 498A
Evidence Act, 1872 — Section 32

Citation : (2022) 08 CAL CK 0012

Hon'ble Judges : Ajoy Kumar Mukherjee, J

Bench : Single Bench

Advocate : Himanshu De, Navanil De, Subhrajit Dey, Rajeshwar Chakra, Subhrajit Dey, Binoy Panda, Narayan Prasad Agarwalla, Pratick Bose

Final Decision : Allowed

Judgement

Ananda Kumar Mukherjee, J

1. Instant Appeal under section 374 (2) of the Code of Criminal Procedure has been directed against the Judgment and Order dated 26.9.2001 and 27.9.2001 respectively passed by Learned Sessions Judge, Jalpaiguri in Sessions Case No. 94 of 2001 whereby the appellant has been convicted for the offence punishable under section 306 of the Indian Penal Code and sentenced to rigorous imprisonment for a period of five years and to pay a fine of Rs. 10,000/- in default to suffer rigorous imprisonment for a further period of two years. The fine if paid is to be handed over to Smt. Lili Dutta, the bereaved wife of the deceased.

2. The gist of prosecution case is that Lili Dutta, the wife of the deceased lodged a written complaint on 20.12.1999 addressed to O.C Maynaguri Police Station, District- Jalpaiguri informing that her husband Dilip Kumar Dutta committed suicide in their house on the night of 18.12.1999 and left behind four suicide notes. In one of the suicide notes he wrote that that Dipak Chandra Roy of Uttar Marichbari was responsible for his death. In the other notes it is written that his

wife, two sons and his mother were not responsible for his death and in another suicide note addressed to the D.I. of school it was stated that he had been cheated by Dipak Chandra Roy, the committee member who should be punished. On the basis of the written complaint Maynaguri Police Station Case No. 158 of 1999 dated 20.12.1999 was registered under section 306 of IPC. Police investigated into the case and submitted charge sheet against the accused person under section 306 of IPC.

3. Dilip Kumar Dutta, the deceased, was the Head Master of a primary school at Barnes Char. Rs. 2,00,000/-was sanctioned by the Government for extension of school building. A committee was constituted to supervise and execute the construction work of the school building. The committee comprised of Bisakha Kabiraj as chairperson, Dilip Kumar Dutta, the Head Master as Secretary and Dipak Chandra Roy the accused as member of village Education Committee of Barnes State Primary School. Some wood was purchased from Lataguri for the construction work and the accused person was entrusted for the purchase of wood. The accused procured inferior quality wood by receiving commission from the seller. There was a dissatisfaction amongst villagers regarding purchase of inferior quality wood. The accused instigated the villagers against the Head Master who was insulted by the villagers at the instance of the accused. On being confronted by Dilip Kumar Dutta the accused insulted him by calling him a cheat, a liar and a thief. Due to such indignation heaped upon the Head Master by Dipak Chandra Roy he was driven to commit suicide at his house in the night between 18.12.1999 and 19.12.1999 leaving four suicide notes in which he made Dipak Chandra Roy responsible for his death.

4. Cognizance of the offence was taken by Learned Magistrate and the case was committed to the Court of learned Sessions Judge, Jalpaiguri. Dipak Chandra Roy, the accused was called upon to answer the charge framed against him as follows:

"that on 18.12.1999 in the night one Dilip Kumar Dutta committed suicide at Kathalbari, Nutonbazar Domohali, P.S. Maynaguri, District-Jalpaiguri and he abetted said Dilip Kumar Dutta for such commission of suicide."

5. The accused pleaded not guilty to the charge and claimed to be tried. In order to substantiate the charge prosecution has examined nine witnesses in all. Biresh Sikdar a teacher of the primary school at Barnes Char has been examined as PW-1, Bisakha Kabiraj a member of Barnes Anchal Gram Panchayet, the chairperson of the school committee as PW-2, Lili Dutta the wife of the deceased as PW-3, Amit Kumar Dutta son of the deceased as PW-4, Dr. Asit Kumar Pal, Medical Officer at Jalpaiguri Sadar Hospital who held Post Mortem examination of the deceased as PW-5, Pratul Chandra Biswas the timber merchant from Lataguri as PW-6, Gouranga Mallick a resident of Marichbari, Domohani has been examined as PW-7, Ganesh Bhowmik another co-villager as PW-8 and S.I of Police, Achinta Gupta the Investigating Officer of the case as PW-9. Prosecution has produced an array documents like the First Information Report which is

marked as Exhibit 8, Formal FIR marked as Exhibit 15, Sketch Map of the place of occurrence as Exhibit 17, Inquest Report as Exhibit 18, Dead body challan as Exhibit 19, Post Mortem Report as Exhibit 14, Report of Examiner of Question Document, CID West Bengal is marked as Exhibit 16, Seizure List of the suicide notes as Exhibit 9/2, Seizure List of original minutes of meeting of Village Education Committee of Barnes State Prime Primary School and related documents as Exhibit 10/1. Seizure List of specimen handwriting of Dilip Kumar Dutta on school records seized in presence of Biresh Sikdar is marked as Exhibit 6/1. Suicide notes are marked as Exhibit 1, Exhibit 7/1, Exhibit 3 and Exhibit 4.

6. Mr. Himanshu De, learned senior advocate for the Appellant argued that except the four suicide notes there is no material evidence against the appellant for his conviction and sentence. It is contended that in column no. 8 of the Inquest Report the reason for death has to be noted but the name of the appellant does not appear in the Inquest Report. Referring to the charge framed against the accused person, it is argued that the same was palpably defective and caused serious prejudice to the appellant as the charge did not disclose how the accused had abetted the offence and what acts of the accused constituted the abetment or disclose involvement of the accused in aiding and instigating the suicide. Learned advocate argued that unless there is any evidence to establish the manner of involvement of the accused person and the process in which the death was abetted and instigated, the accused/appellants cannot be held responsible for the death of Dilip Kumar Dutta.

7. The third facet of appellant's argument is that the deceased wrote in the suicide note that he had been cheated by Dipak Chandra Roy, a committee member regarding construction of the VEC room for which he should be punished but none of the witnesses have stated that the deceased was cheated by the appellant nor have the witnesses adduced any evidence to establish that the accused person abetted the commission of suicide of the deceased. It is argued that the offence under section 306 of IPC could not be established against the accused and except for referring the name of the appellant in the suicide note, there is no reference of any act or inducement by which the appellant has intentionally aided and instigated the deceased in committing suicide.

8. Learned senior advocate for the appellant vehemently argued that learned Trial Court failed to appreciate the evidence on record in the proper perspective and arrived at a wrong conclusion. It is submitted that Biresh Sikdar (PW-1) who was a teacher in the Primary School at Barnes Char deposed that before committing suicide Dilip Kumar Dutta wrote four suicide notes. One of which was addressed to him. The four suicide notes were in the handwriting of the deceased and on the basis of the evidence of PW-1 the four suicide notes were marked as Exhibit-1, 2, 3 and 4. The witness stated that he heard about a dispute which arose in a meeting of the committee regarding quality of the wood already purchased for the purpose of construction and Dilip Kumar Dutta had to hear a lot of accusations from the villagers because the quality of the wood was

not up to mark. PW-1 stated that this accusation caused a great mental anxiety and tension to Dilip Kumar Dutta who was a good and honest man. In course of cross examination PW-1 also deposed that two days before the incident Dilip Kumar Dutta was insulted by the villagers. It is argued on behalf of the appellant that PW-1 did not make any whisper regarding the involvement of the accused/appellant in the suicide by Dilip Kumar Dutta. Referring to the evidence of PW-2 Bisakha Kabiraj, a Panchayet member it is submitted that she was the chair person of the committee constituted to supervise the construction work of the school and that the accused was a member of the committee. It is argued that the witness did not make a single reference to the accused in relation to the death of Dilip Kumar Dutta.

9. Taking me through the evidence of Lili Dutta, PW-3 learned advocate for the appellant argued that the witness stated that her husband was the Secretary of the committee for looking after the new construction works of the Barnes Char Primary School. He went to purchase wood at Lataguri and subsequently found that the wood were not up to the required standard. She further deposed that the accused was given kickbacks and on being confronted by her husband the accused called her husband a cheat, a liar and a thief. The evidence of PW-3 disclosed that her husband left behind four suicide notes. In cross examination of PW-3 admitted that she did not mention in the FIR that the accused called her husband a cheat, thief and a liar. She stated the same before the Investigating Officer. Learned advocate for the appellant took me through the evidence of the Investigating Officer (PW-9) who in the cross examination deposed that PW-3 did not state to her that the accused called Dilip Kumar Dutta a cheat and liar. It is argued by learned advocate that the statement of PW-3 to such extent cannot be accepted as it was an improvement made by her in course of her evidence. In support of his argument learned advocate relied upon a decision in the case of Tarun @ Gautam Mukherjee Vs. State of West Bengal; 2001 CRI. L. J. 4937 (SCC), wherein it was held,

"4. To appreciate this contention, we have ourselves scrutinised the evidence of PWs. 2, 4 and 5. The maid servant (PW- 4), who deposed in her evidence in chief about the fact that the accused used to assault the deceased almost daily on the instigation of his sister, but in the cross-examination, it has been elicited that she has not stated so in her statement to the police recorded under Section 161 Cr.P.C. Such material omission would discredit her version in court. If her evidence is taken out from the purview of consideration, then the evidence of PWs. 2 and 5 cannot be held to be of such nature which would establish the cruelty on the part of the husband to bring home the offence under Section 498-A, I.P.C. In our view, therefore, the High Court was in error in upholding the conviction under Section 498-A, I.P.C."

10. Referring to the testimony of Amit Kumar Dutta PW-4, the son of the deceased it is argued that PW-4 in his evidence stated that accused took commission for purchasing wood from the seller and the quality of the wood was

not satisfactory. He further deposed that the accused threatened his father with dire consequence and instigated the villagers against his father who was badly insulted by the villagers at the instance of the accused. Referring to the evidence of S.I. Achinta Gupta, PW-9 it is submitted that PW-4 did not disclosed to the Investigating Officer that the accused threatened his father with dire consequences or that he instigated the villagers to go against the fathers. Learned advocate submitted that the evidence of PW-4 does not in any manner establish that the accused person had aided, instigated or abetted the suicide committed by the deceased. Learned advocate for the appellant argued that simply by naming the accused person in the suicide note left behind by the deceased, does not establish that the accused has abetted the death of Dilip Kumar Dutta or he had any mens rea for his death.

11. To fortify his argument learned advocate for the appellant relied upon the decision in the case of Netai Dutta Vs. State of West Bengal; (2005) 2 SCC 659 wherein the Hon'ble Supreme Court noted that, "there was absolutely no averment in the alleged suicide note left behind by the victim that the appellant caused any harm to him or was in any responsible for delay in paying salary to the deceased Pranab Kumar Nag. It was noted that the deceased was very much dissatisfied that the working condition at the work place but that the deceased after his transfer in 1999 had never joined the office and had absented himself for the period of 2 (Two) years and that the suicide took place on 16.02.2001. It was held that the appellant could not have been any way instigated the deceased to commit suicide or he was responsible for the suicide of Pranab Kumar Nag". It was held that "an offence under Section 306 of the Indian Penal Code would stand only if there is an "abetment" for the commission of the crime. The parameters of "abetment" have been stated in Section 107 of the Indian Penal Code. Section 107 of the Indian Penal Code says that a person abets the doing of thing, who instigates any person to do that thing; or engages with one or more other person/persons in any conspiracy for the doing of that thing, if an act or illegal omission take place in pursuance of that conspiracy, or that person should have intentionally aided any act or illegal omission. The explanation to Section 107 of the Indian Penal Code says that wilfully misrepresentation or wilfully concealment of a materials fact which he is bound to disclose, may also come within the contours of "abetment". It was observed by the Hon'ble Court that in the suicide note, except referring to the name of the appellant at two places, there is no reference of any act or incident whereby the appellant was alleged to have committed any wilful act or omission or intentionally aided or instigated the deceased Pranab Kumar Nag in committing the act of suicide. In that case Hon'ble Court found it fit to invoke the extraordinary power under Section 482 of the Code of Criminal Procedure and quashed the criminal proceedings initiated against the appellant.

12. Learned Advocate for the appellant to reinforce his argument that there was no "abetment" on the part of the appellant to induce the deceased to commit suicide, relied upon the decision in the case of Harbhajan Sandhu Vs. State of

Punjab and Haryana & Anr.; CRM-M-34495-2021. In the said case under Section 306 of the Indian Penal Code where a suicide note was left behind by the deceased, the provisions under Section 306 and Section 107 of the Indian Penal Code as under:-

"Section 306 of the IPC reads as under:-

"Section 306. Abetment of suicide. – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

Section 107 of the IPC reads as under :-

"107. Abetment of a thing. – A person abets the doing of a thing, who-

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, in order to the doing of that thing; or

Thirdly. – Intentionally aids, by any act or illegal omission, the doing of that thing."

13. The fact of the case in brief is that a suicide note addressed to the S.H.O., Jalandhar was left stating that on 18.02.2019 he was returning after purchase of milk and at about 9.p.m. when he reached in front of Gurudwara Ravidass, accomplices of appellant Harbhajan Sandhu attacked him and he was grievously injured. About 8-9 youths beat him up along with Bindri, brother-in-law of Harbhajan Sandhu, his driver Jagjit Singh @ Jeeta; Ashok, Sonu and Monu. He was admitted at a Civil Hospital for 25 days and his nose and two ribs were fractured. The matter was reported to the police and police apprehended 3 (three) persons, who were afterwards released. In the said note the deceased also wrote that since they were poor people police did not help them and he was fed up with his injuries and could not tolerate pain any more. His family members were out for working and that after his death strict legal action should be taken against the accused Harbhajan Sandhu the main accused who had also threatened him at the hospital that he will kill his other family members.

14. Reliance was also placed upon the decision in the case of Tarun @ Gautam Mukherjee Vs. State of West Bengal, wherein a case under Section 306 and Section 498A of the Indian Penal Code there were allegations of harassment and cruelty meted out by the wife, who was forced to commit suicide. On considering the evidence the High Court held that offence under Section 306 of the Indian Penal Code was not made out by the prosecution, but the materials on record proved the offence under Section 498A of the Indian Penal Code and therefore convicted the appellant under Section 498A of the Indian Penal Code and the sentence was reduced to rigorous imprisonment for 2 (Two) years and a fine of

Rs. 2,000/- (Two Thousand only).

15. Drawing support from the principle laid down in the case of Raja Ram Vs. State of Rajasthan; (2005) 5 SCC 272, wherein a witness who did not support the prosecution case, was not declared hostile by prosecution and it was held that the defence can rely upon the evidence of such witness and it would be binding upon the prosecution. Learned advocate for the appellant referring to the evidence of PW-7 Gouranga Mallick argued that the witness deposed that there was a dispute in respect of purchase of bad quality of wood and the members of the public insulted the Head Master, Dilip Kumar Dutta holding him responsible for purchase of inferior quality of wood and the Headmaster committed suicide in two to three days. The witness was not declared hostile by prosecution and learned advocate argued that the cause of death of Dilip Kumar Dutta should be ascribed to the insult heaped upon him by the public, holding him responsible for purchase of inferior quality of wood. According to learned advocate for the appellant the impugned Judgment of conviction is bad in law and the same is liable to be set aside and appellant acquitted from this case.

16. Mr. Panda, learned advocate for the State argued that the impugned Judgment needs no interference as it is based upon the suicide notes left behind by the deceased which are admissible under section 32 of the Indian Evidence Act and can be treated as trustworthy for the purpose of conviction of the accused/appellant.

17. I have considered the arguments advanced by learned advocates for the appellant and the respondent. On reassessment of the evidence of the prosecution witnesses it appears to me that the evidence of PW-1 does not disclose about involvement of the accused person for the death of Dilip Kumar Dutta. From the cross examination of the evidence it appears that two days prior to the incident the deceased was insulted by villagers. It also appears from the evidence in chief of PW-1 that there had been a lot of accusation against Dilip Kumar Dutta for purchase of bad quality of wood and he was suffering from mental anxiety and tension. Apart from such evidence there is nothing to indicate that Dipak Chandra Roy was instrumental to the death of Dilip Kumar Dutta. The evidence of PW-2 Bisakah Kabiraj, only disclose that she was the Chairperson of the committee to supervise the new construction work for the school. The deceased was the Secretary and the accused was a Member. The evidence of PW-2 does not have any bearing upon the prosecution case and does not disclose the cause of suicide by Dilip Kumar Dutta.

18. Lili Dutta PW-3, the wife of the deceased lodged the First Information Report where she has stated about her husband's death and his leaving behind four suicide notes. According to her evidence her husband found that the accused received commission from the place where wood was purchased and later on being confronted by her husband the accused insulted her husband by calling him thief, liar and cheat. In cross examination the witness stated that she did not mention in the FIR about the accusation made by the accused against her

husband. She also deposed that she did not make any statement to the Investigating Officer that the school students and local people held her husband responsible for everything. In course of cross examination of PW-9, the Investigating Officer it was elicited on behalf of the accused person that PW-3 stated before the I.O. that the students of the primary school as well as the villagers held her husband responsible for purchasing inferior quality of wood. It also appears that the witness that she did not state to the I.O. that the accused called Dilip Kumar Dutta a cheat and a liar. It would therefore, emerge from the evidence of PW-3 and the Investigating Officer (PW-9) that the husband of PW-3 was held responsible by students of the school and local people for the purchase of bad quality of wood. The role of the accused/appellant for the suicide of Dilip Kumar Dutta does not transpire from the evidence of PW-3. Amit Kumar Dutta PW-4, the son deposed that his father committed suicide on 18.12.1999 by hanging. He also stated that a committee was formed to supervise the new work for construction of the school. His father went to Lataguri to purchase the wood. PW-4 also stated that he heard from his mother that accused took commission over purchase of wood from the seller for which the quality of the wood was not satisfactory and the accused also instigated the villagers to go against his father and the father was badly insulted by the villagers. It was elicited through cross examination of PW-9 (I.O) that PW-4 did not disclose to him that the accused threatened his father with dire consequence or the accused instigated the villagers to go against his father. Therefore, the evidence of PW-4 regarding alleged instigation of the villagers by the accused person to insult the deceased is not established. PW-5 the Doctor who held Post Mortem examination has proved the Post Mortem Report as Exhibit 14. It appears from the Post Mortem Report that he death of Dilip Kumar Dutta was due to suicide.

19. PW-6 a timber merchant from Lataguri deposed that on 1.12.1999 Dilip Kumar Dutta, Dipak Chandra Roy, Gouranga Mallick and two others went to his shop and placed order for making delivery of some salwood of different size. On 3.12.1999 he delivered all the wood on receiving of a consideration price of Rs. 30,000/-. Thereafter 50% of the wood delivered was returned because of its poor quality and such persons went to his shop on 17.12.1999 to place a fresh order for getting wood and they paid Rs. 7,00/- as advance. Cross examination of the witness has been declined by defence. It is gathered from the testimony of PW-6 that due to bad quality of wood delivered by PW-6, 50% of the same were returned on 17.12.1999. The deceased committed suicide on the following date that is on the night of 18.12.1999. The cause of death may be related to purchase of inferior quality of wood for which a part of it was return. However, there is no iota of evidence to establish that the accused/appellant had received any commission or kick back or was solely responsible for purchase of inferior quality of wood. It would appear from the evidence of PW-7 Gouranga Mallick that a dispute crept up regarding purchase of bad quality of wood for which public insulted the Head Master. On close scrutiny of the oral testimony of the witnesses I do not find any material which would suggest that accused/appellant

aided, instigated or abetted the suicide committed by the deceased by his act or omission.

20. Learned Trial Judge in the impugned Judgment has relied upon the suicide notes and shifted the burden on the accused person to prove as to why the deceased held the accused person responsible when there was no prove to establish any enmity between the deceased and the accused. I find that learned Sessions Judge referring to the contents of the suicide notes noted that the accused caused deception upon the deceased and such deception actively stimulated the deceased to commit suicide. Learned Sessions Judge went to the extent of holding that the accused might not have intended that the deceased would commit suicide but there are cogent circumstances where from it would appear that the accused was instrumental in infusing the idea of committing suicide in the mind of the deceased. He went to the extent of holding that the dying man will not falsely implicate an innocent person for his death.

21. I am unable to accept the reasonings noted by learned Trial Judge for shifting the burden of proof upon the accused person and presume that simply because the name of the accused appeared in the suicide note as a person who cheated the deceased, he is responsible for aiding and instigating the suicide committing Dilip Kumar Dutta.

22. On a close reading of the Suicide note marked Exhibit-1 the deceased noted that he has never committed any wrong and he was dying for the sake of the construction of the school building and being wrongfully insulted. In the second Suicide note (Exhibit-3) it has been written that Dipak Chandra Roy was responsible for his death and he should be punished. There is no mention in the Suicide note how and why Dipak Chandra Roy was responsible for his death. In the third suicide note the deceased wrote that he had good relation with his wife, two sons and mother and they were not responsible for his death and furthermore he could not keep anything for their survival for which he requested someone to take care of them. In the fourth Suicide note marked as Exhibit 7/1 the deceased addressed the D.I of School, Jalpaiguri and wrote that he has been cheated by Dipak Chandra Roy regarding construction of the VEC room for their school and he should be punished. The deceased further wrote that one of his family members should be provided with a job and that Rs. 29,500/- was spent for purchase of wood and subsequently the wood was returned. He stated that in future no other VEC room should be constructed and that the dignity of a teacher was much higher. Furthermore, no one from his family member was responsible for his death. After considering all the Suicide notes (Exhibit- 1, 3) it appears that the name of accused/appellant appears in Exhibit-3 and Exhibit-7/1. It has been stated that Dipak Chandra Roy has cheated him. On reading the contents of the suicide notes along with the evidence adduced by prosecution witnesses. It cannot be ascertain as to how the appellant was responsible for the death of Dilip Kumar Dutta. There were other members and Chairperson in the committee but they did not adduced any evidence disclosing the involvement of Dipak Chandra

Roy in cheating or defrauding money allotted for the purpose of construction of the new school building. There is no evidence on record to show the extent of such cheating. In a suicide note (Exhibit-7/1) it has been stated that Rs. 29,500/- was spent for the purpose of purchase of wood and it appears from the evidence of PW-6 the timber merchant that he received R. 30,000/- for delivery of wood. Therefore, the amount which was spent was received by PW-6 and there is no evidence to indicate the accused/appellant had cheated or it was for such reason the deceased committed suicide. On reappraisal of the evidence it appears that there was a discontentment amongst school students and local people over purchase of inferior quality of material use for purpose of construction of the school. For such dissatisfaction the villagers blamed the deceased and insulted him. The evidence of PW-1 reveals that the deceased was undergoing mental anxiety and tension due to lot of accusation made against him. Though in the two suicide notes accused/appellant was name by the deceased, there is no evidence to prove that the accused by his act and omissions abetted the death of Dilip Kumar Dutta. I also do not find any material in the evidence to establish that the accused person had any mens rea, intending to drive Dilip Kumar Dutta to commit suicide.

23. In view of such facts and circumstances and the principal laid down in the case of Netai Dutta Vs. State of West Bengal supra and Harbhajan Sandhu Vs. State of Punjab and Haryana & Anr. where the names of the accused were mentioned in the suicide notes but they were not found guilty of the offence, I hold that learned Trial Court has failed to evaluate the evidence on record and erred in law by shifting the onus upon the accused to prove as to why the deceased would name him in the suicide notes if he was not guilty of the offence. The Judgment of conviction and sentence passed by learned Sessions Judge is therefore found not tenable under the facts and circumstances of the case and the evidence adduced by prosecution witnesses.

24. In view of my aforesaid discussion the impugned Judgment of conviction and sentence passed by learned Sessions Judge, Jalpaiguri in Sessions Case No. 94 of 2001 is set aside. The appeal stands allowed on contest. The appellant/accused is acquitted from the charge under section 306 of IPC and is discharged from his bail bonds.

25. Interim order if any stands vacated. Let a copy of this judgment along with LCR be sent to Learned Sessions Judge, Jalpaiguri, for information.

26. Urgent Photostat certified copy of this judgment, be supplied to the parties if applied for, maintaining all formalities.