
(2012) 06 GAU CK 0102
In the Gauhati High Court
Case No : Criminal Appeal No. 21 of 2004

Shri Sashankar Roy and Another

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 14-06-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2012) 06 GAU CK 0102

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : Rita Das Mazumder, Amicus Curiae, for the Appellant;

Final Decision : Allowed

Judgement

N. Kotiswar Singh, J.—The present appeal has been preferred against the judgment and order dated 30.12.2003 passed by the learned Addl. Sessions Judge (Ad-hoc), Jorhat in Sessions Case No. 89(J-J)2002 by which the present appellants were convicted u/s 306/34 IPC and sentenced to undergo 5(five) years Rigorous Imprisonment with a fine Rs. 10,000/- each and in default, Simple Imprisonment for 2(two) years. Facts of the case as portrayed by the prosecution shows a rather shocking incident where a person, who was apparently a popular and respected person in the locality being unable to face the ignominy of being falsely accused of immoral behaviour by the present accused persons took the extreme step of ending his own life.

2. In the First Information Report lodged before the Officer-in-Charge of the Mariani P.S. on 02.12.1999, it was stated that the deceased Apurba Mahanta was serving as a Head Clerk (Railway Electrical) and while he was sleeping in his railway quarter at Kecha Colony in Mariani, at around 3 o'clock in the afternoon of 29.11.1999, the two appellants along with one girl, Mompi Dey, entered his house without his knowledge and consent with a bad intention. When he heard their voice, he woke up and tried to drive them away from the room. Unable to fulfill their lustful desire, the two appellants raised a hue and cry accusing that

the deceased Apurba Mahanta had brought the girl with a bad intention and they then dragged the deceased from his house to an open space where some boys were playing cricket. There the two appellants beat him up with a cricket bat. Unable to bear this humiliation, the said Apurba Mahanta committed suicide by hanging from the ceiling fan in his quarter at night. It is further stated that at the time of holding inquest on the dead body, a suicide note was recovered from his pocket with the words "committed suicide unable to bear the humiliation" written on it. One of the office colleagues of the deceased identified the hand writing to be that of the deceased. On the basis of the aforesaid FIR, investigation was initiated. The said two appellants were subsequently charged u/s 306/34 IPC. The accused appellants pleaded not guilty and denied having committed the crime as alleged.

3. The prosecution examined as many as 10(ten) witnesses. Based on the evidences on record, the learned Addl. Sessions Judge, Ad-hoc, Jorhat (FTC) tried the appellants in the aforesaid Sessions Case No. 89 (J J) 2002 and the convicted the two appellants by holding that the prosecution had been able to prove the case against them u/s 302/34 IPC and were sentenced to undergo 5 years RI each and to pay a fine of Rs. 10,000/- each, in default of which to undergo two years of simple imprisonment.

4. At the trial, the learned Sessions Court framed the issue as to whether on 29.11.89 during the night at Railway Kecha Colony, Mariani, Apurba Mahanta had committed suicide by hanging from the ceiling fan and whether both the appellants in furtherance of their common intention abetted Apurba Mahanta to commit suicide as alleged by the prosecution. The learned Trial Court after having considered the medical evidence and other witness accounts and evidences came to the conclusion that the said deceased Apurba Mahanta committed suicide by hanging on the night of 29.11.99 which was abetted by the appellants and accordingly, convicted the appellants u/s 306/34 IPC.

5. The learned Trial Court on considering the suicide note, which was recovered from the body of Apurba Mahanta held that the said note was written by Apurba Mahanta, whose handwriting was identified by PW No. 4, Majin Chandra Khaplari, who was working in the office of the deceased. The learned Trial Court, on the basis of the aforesaid suicide note held that the deceased Apurba Mahanta committed suicide because of the blame placed on him by the accused persons.

The learned Trial Court also gave a finding that Apurba Mahanta was a person having social status and commanded respect in the locality. He was associated with various social issues and sports and enjoyed good reputation in the society.

Based on the depositions of PW No. 2 (Dhruba Hazarika), PW No. 3 (Rajkiran Barpatra Gohain), PW No. 5 (Mina Das) and PW No. 6 (Bipul Das), who are all independent witnesses, the learned Trial Court held that the deceased Apurba Mahanta was beaten up by the accused persons with a cricket bat. The deceased Apurba Mahanta had told those witnesses that he was falsely blamed by both the

accused persons by involving a girl, which was unbearable for him. The said deceased Apurba Mahanta narrated all those incidents to the said witnesses and he was weeping and he also showed them bruise mark on his back.

The learned Trial Court also held that on the basis of the statement of the appellant, Shashankar Roy made before the Investigating Officer that he used a cricket bat for beating Apurba Mahanta and led to the recovery of the cricket bat from the house of Smt. Mina Das.

The learned Trial Court also held that the post crime conduct of the two appellants in absconding from their houses after the incident is indicative of their culpability which is admissible u/s 8 of the Evidence Act.

The learned Trial Court also held that there was evidence on record based on the depositions of the aforesaid witnesses, to show that on 29.11.99 at about 3 pm, the two appellants had dragged the deceased Apurba Mahanta from his house to an open field and blamed the deceased Apurba Mahanta of involvement with the said girl, Mompi Dey and beat him with a cricket bat openly. The learned Trial Court also held that the intent of the both the appellants was same and their intention was to put false blame on the deceased. The learned Trial Court also held that there was evidence on record to show that the appellants had taken the said girl to the house of Apurba Mahanta to fulfill their sexual lust by taking advantage of the open door of the house of the deceased. When the deceased objected to their nefarious activities, the appellants put the blame on the deceased by involving the deceased with said girl which was unbearable for the deceased who had a social status in the society. Since the deceased could not tolerate the false accusation, he committed suicide. The learned Trial Court held that if the accused persons had not falsely accused the deceased and put the blame on the deceased, the said Apurba Mahanta would not have committed suicide. Accordingly, the learned Trial Court held that the said deceased Apurba Mahanta committed suicide because of the false accusation by the appellants and the prosecution has been able to establish that both the appellants in furtherance of their common intention abetted Apurba Mahanta to commit suicide.

6. Miss Rita Das Mazumder, learned Amicus Curiae, appearing for the appellants have forcefully argued that no case has been made out to convict the two appellants u/s 306/34 IPC. On the other hand, the learned PP appearing for the State has equally strongly argued that there are sufficient evidences to convict the said two appellants and no case has been made out for interfering by this Court.

7. Before we go into the rival contentions of the parties and also the finding of the trial court, whereby the appellants were charged and convicted for abetment of suicide of Apurba Mahanta u/s 306 read with section 34 of IPC, it may be appropriate to refresh ourselves with the law and judicial pronouncements in this regard.

Section 306 IPC reads as follows:-

306. 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.

The crux of the charge against the appellants is that they had abetted the commission of suicide by Apurba Mahanta.

Therefore, it has to be established firstly, that Apurba Mahanta had committed suicide.

Secondly, it has to be established that the appellants had abetted the commission of suicide by Apurba Mahanta.

8. We will therefore, examine firstly, on the basis of the records, whether Apurba Mahanta had committed suicide.

In the present case, though there was no eye witness to the act of commission of suicide by Apurba Mahanta, there is evidence on record that when the news spread about his suicide many including PW 4, PW 6, the local witnesses and PW 8, the police witness went to his place and saw the deceased hanging from the ceiling fan.

ASI Khagen Nath, PW-8, held the inquest while the deceased was still hanging. The dead body was taken down in presence of witnesses by PW-8.

In the Inquest Report, it is mentioned that the deceased was frothing at the mouth. The body was found hanging about 2 ft. above the ground. Excreta was seen in the anus and in the urinary opening. The left side of the neck bore marks of knots.

PW-1, the doctor who conducted the post mortem on the body of the deceased was examined and he gave the opinion that the cause of death was Asphyxia as a result of hanging. The said PW 1 was not cross-examined by the defence.

In absence of any other evidence to the contrary, in view of the above evidences on record, which have not been also contradicted or questioned by the defence, this Court would also hold that the said Apurba Mahanta died of hanging by himself. In other words, the commission of suicide by Apurba Mahanta stands proved.

In view of that the first ingredient for the crime as defined u/s 306 of the IPC is established.

9. We now deal with the issue whether the appellants had abetted the commission of suicide by Apurba Mahanta.

10. As to what is abetment has been defined by the Indian Penal Code in Section 107 of the IPC. Section 107 of IPC reads as follows.

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

First.-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, and in order to the doing of that thing; or

Thirdly.-Intentionally aides, by any act or illegal omission, the doing of that thing.

Explanation 1.-A person who, by illful misrepresentation, or by illful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration

A, a public officer, is illfully by a warrant from a Court of Justice to apprehend Z. Brief facts of the case, knowing that fact and also that C is not Z, illfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here Brief facts of the case abets by instigation the apprehension of C.

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Therefore, in order to uphold the conviction of the appellants u/s 306 of IPC, the abetment of suicide by Apurba Mahanta, of which the appellants are accused of, must also satisfy the requirements of Section 107 of IPC.

Therefore, as required u/s 107 of IPC, one of the following requirements has to be satisfied.

First - The appellants had instigated Apurba Mahanta to commit suicide; or

Secondly - The appellants have engaged with one or more other person or persons in any conspiracy for commission of suicide by Apurba Mahanta, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to committing of suicide by Apurba Mahanta; or

Thirdly.-The appellants have intentionally aided, by any act or illegal omission, the commission of suicide by Apurba Mahanta.

As regards the Explanation 1, it seems the same is not relevant for our purpose.

As regards Explanation 2, it has to be shown that the appellants either prior to or at the time of the commission of suicide by Apurba Mahanta had done anything to facilitate the suicide by Apurba Mahanta.

If any of the above conditions stands satisfied, the case of the appellants could be brought within the ambit of Section 306 IPC.

11. We may also note that the scope of the aforesaid sections of 107 and 306 of IPC had been dealt with by the Supreme Court in a number of cases. We may

refer to a few of the notable cases.

12. Referring to the meaning of abetment so as to mean instigation, the Supreme Court in the case of Ramesh Kumar Vs. State of Chhattisgarh, , has examined different shades of the meaning of "instigation".

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

Since, there is no eyewitness account of what the appellants had actually did or said to the said deceased, it has be shown from the available evidence that there was reasonable certainty that the appellants had incited or instigated the deceased to commit suicide or that the appellant had by their acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred.

13. Further, mens rea for abetment or instigation has to be established. Referring to the case of Ramesh Kumar (supra), the Supreme Court observed in para No. 19 in the case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), , as follows:-

19. As observed in Ramesh Kumar Vs. State of Chhattisgarh, , where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an "instigation" may be inferred. In other words, in order to prove that the accused commission of suicide by a person, it has to be established that:

(i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

14. In the aforesaid case of Chitresh Kumar Chopra (supra), it was further observed that,

20. In the background of this legal position, we may advert to the case at hand. The question as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

15. Referring to the case of State of West Bengal Vs. Orilal Jaiswal and another, , the Supreme Court in M. Mohan Vs. The State represented by The Deputy Superintendent of Police, also cautioned and held that,

42. In State of West Bengal Vs. Orilal Jaiswal and another, this Court has cautioned that (SCC p. 90, para 17) the Court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end her life by committing suicide. If it appears to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life, quite common to the society, to which the victim belonged and such petulance, discord and difference were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty.

43. This Court in Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), had an occasion to deal with this aspect of. The Court dealt with the dictionary meaning of the word "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

44. involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained.

45. The intention of the legislature and the ratio of the cases decided by this Court are clear that in order to convict a person u/s 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

16. In the light of the contours of law as discussed above, we will examine

whether the facts as available on record would fit into it, so as to fasten the guilt of abetment of suicide of deceased Apurba Mahanta to the appellants and uphold the conviction of the appellants u/s 306/34 of IPC.

17. We will now examine whether the appellants had done anything by which it can be said that they had instigated the deceased Apurba Mahanta to commit suicide in terms of the first provision to Section 107 of IPC.

Therefore, it is important to see what exactly the appellants had done before the commission of the act so as to amount to instigation.

The stand of the prosecution is that the two appellants had brought a girl to the house of the deceased Apurba Mahanta without his permission to indulge in certain immoral activities and when discovered and the deceased objected to their plan, it resulted in the said two appellants to falsely accuse the deceased of involving with the girl. The appellants not only falsely accused the deceased of involving with the girl but also beat him up with a cricket bat in the open. The deceased unable to bear such humiliation of being falsely accused by the appellants and being beaten in public took the extreme steps of ending his own life.

Therefore, it is important to see whether the aforesaid facts have been established or not before we draw any inference of abetment.

18. It has been vehemently argued by Miss Rita Das Mazumder, the learned Amicus Curiae that there is no evidence at all about the aforesaid alleged incident except for the hearsay evidence of PW No. 2, PW No. 3, PW No. 5 and PW No. 6. The learned Trial Court had heavily relied on the evidences of PW No. 2, PW No. 3, PW No. 5 and PW No. 6 for his finding of proof for the aforesaid incident. However, a close examination of the deposition of the aforesaid witnesses would reveal that none of the aforesaid witnesses had seen the deceased Apurba Mahanta being assaulted by the two appellants. None of the aforesaid witnesses also witnessed the incident of two appellants bringing the said girl, Mompi Dey in the house of the deceased. None of the witnesses also heard the false accusation made by the appellants against the deceased. No witness had been examined regarding the alleged beating of the deceased by the two appellants, even though as per the prosecution, the deceased was beaten in the open field near his house. It can be seen from the evidence that there were many houses/ neighbours near the house of the deceased. Yet none was examined. Therefore, because of lack of any eye witness to the aforesaid alleged assault of the deceased by the appellants with a cricket bat, the said fact cannot be said to have been proved beyond reasonable doubt.

It is also not explained as to why the said girl, Mompi Dey, who was the source of the entire incident culminating in the unfortunate suicide of the deceased Apurba Mahanta was not examined. Nothing prevented the prosecution to produce and examine her. She could have been the best evidence as what actually transpired at the house of the deceased and also what happened thereafter when the

deceased was stated to have been beaten up by the appellants. Therefore, lack of any direct evidence as regard the aforesaid incident has thrown serious doubt on the credibility of the prosecution's case.

The prosecution heavily relied on the statements of the aforesaid witnesses and which were also believed by the learned Trial Court as regard the aforesaid incident. The aforesaid witnesses stated that after hearing about the incident which occurred in the house of the deceased, the said witnesses had gone to visit the deceased whereupon the deceased had apparently narrated the incident involving a girl and the appellants and also about the incident of the alleged beating by the appellants and the false accusation made by the appellants against the deceased. The only evidence available on record about the incident involving the girl in the house of the deceased and the subsequent false accusation made by the appellants on the deceased is based on the statements made by the said aforesaid witnesses, who were not eye witnesses but as told by the deceased. Therefore, this Court is of the opinion that to hold that the fact of bringing the girl in the house of Apurba Mahanta by the appellants, the objections raised by Apurba Mahanta to their alleged immoral activities and false accusation made by the appellants to the deceased involving a girl, cannot be said to have been proved merely on the basis of the statements of the aforesaid PWs without any corroborating evidence. This is because of the fact that even if what transpired inside the house of the deceased may not have been witnessed, but as regards the contention that deceased was falsely accused by the appellants of being involved with the girl and also that the deceased was beaten up in the open field by the appellants, without being seen or heard by any neighbour or person in the locality, this Court finds it hard to believe.

The fact that PWs had stated that Apurba Mahanta had showed the injury on his back and he was very depressed and he was also weeping and also the fact that post mortem report showed bruises on his back does not necessarily prove the earlier incident involving the girl at the house of the deceased as discussed above.

19. Therefore, this Court is of the opinion that the contention of the prosecution that the two appellants had brought the girl to the house of the deceased who were planning to indulge in certain immoral activities in the house of the deceased and also that on being objected to by the deceased, the two appellants had falsely accused the deceased of having involved with the girl, cannot be said to have been proved.

20. As regards the contention of the prosecution that the appellants had beaten the deceased with a cricket bat in the open also cannot be said to have been proved beyond reasonable doubt in view of the fact that no one including the aforesaid witnesses had seen the assault of the deceased by the two appellants even though the said incident had apparently taken place in the open field during day time. It is quite surprising as to why nobody had witnessed the aforesaid incident including any of the children who were playing cricket in the field.

Therefore, merely on the alleged discovery of the cricket bat from the house of the PW No. 5 and existence of bruise marks on the back of the deceased and on the statement made by the PWs after being told by the deceased as stated above, the aforesaid assault also cannot be said to be proved beyond reasonable doubt.

21. We may briefly refer to the statement of PW No. 3 who stated that he came to know from his neighbour that Apurba Mahanta had been assaulted and thereafter, he went to his quarter to enquire about him, whereupon, the deceased Apurba Mahanta told him that the two accused had assaulted him. However, none of the aforesaid neighbours, who had informed the PW No. 3 about the assault of Apurba Mahanta by the two appellants, had been examined.

PW No. 6 also in his deposition stated that at noon on the day of incident, when he was sleeping, Rajani Hazarika raised hue and cry. At this stage, he along with his mother went towards the deceased's house and he found the deceased looking very sad and told him that the two appellants had assaulted him with cricket bats and made false accusation against him. Surprisingly, the said Rajani Hazarika was also not examined. Therefore, what emerges is that there was no eye witness in respect of the aforesaid alleged assault of the deceased by the appellants. Only those witnesses who did not witness the said incident were examined. Therefore, failure on the part of the prosecution to examine and produce the best evidence available would cast a doubt on the credibility of the prosecution's case.

22. There is, of course, evidence to the fact that the deceased was very sad on that day. In fact some witnesses also found him weeping saying that he had been falsely accused by the appellants. However, apart from the statement made by the deceased before the aforesaid PWs that he has been falsely accused by the appellants and that he was beaten up by the appellants with a cricket bat, there is no other evidence on record. Therefore, there is nothing on record to show as to how the appellants had instigated the deceased to commit suicide in terms of first, second and third parts of Section 107 of the IPC and also Explanation-2 to the said section.

23. The Hon'ble Supreme Court has held that in order attract Section 107 of IPC, the mens rea i.e. intention to abet or instigate or to goad or to encourage to commit suicide is required to be established. However, as discussed above, there is nothing on record to show that the appellants had the intention to cause the deceased to commit suicide, nor it is clearly inferable from any of the established facts.

Intention to humiliate the deceased cannot be equated with intention to instigate the deceased to commit suicide.

Even if we assume that the incident of false accusation by the appellants to the deceased of being involved with a girl and also the fact of beating the deceased by cricket bat as per the prosecution story is held to be proved, this does not

itself show or prove that there was intention on the part of the appellants to make him commit suicide. The aforesaid incident apparently was a one time incident and there is no evidence to the effect that the appellants had repeatedly abused or insulted or humiliated the deceased by way of words or deeds so as to drive the deceased to despair and force him to commit suicide.

Of course, this Court is not suggesting that a one time incident cannot give rise to situation to constitute ingredients for section 306 IPC, if the facts are otherwise very clear and there are unimpeachable evidence in that regard.

However, where the evidence is not absolutely clear, where the facts cannot be said to have been established beyond reasonable doubts, it may be risky to fasten anyone with the liability u/s 306 IPC, more so when the mens rea has not been proved.

24. There is nothing on record to show that there was no option left for the deceased except to commit suicide because of the aforesaid alleged acts of the appellants so as to attract Section 107 IPC.

It seems that after the aforesaid alleged incident of false accusation and the assault by the appellants, some people of the locality had gone to the house of the deceased to share his grief and the unhappiness. PW No. 2 in his deposition states that the deceased was thinking about lodging a complaint the next day with the police. PW No. 6 in his evidence stated that he went to the house of the deceased along with his mother and pacified him and thereafter, returned. Therefore, even if the deceased was totally devastated by the false accusation by the appellants and also by assault by the appellants as stated above, it cannot be stated that he was driven to such a condition that he had no other option but to commit suicide to salvage his prestige and honour.

25. We may recollect what the Hon'ble Supreme Court stated in *State of W.B. v. Orilal Jaiswa* (supra) that there may be situation where the victim committing suicide can be hypersensitive to ordinary petulance and discord. The Hon'ble Supreme Court in *Chitresh Kumar Chopra* (supra) also observed that each person's suicidability pattern is different from the others. Each person has his own idea of self-esteem and self-respect and therefore, it is impossible to lay down any straitjacket formula in dealing with such cases of suicide. In the present case, the deceased seems to be a very sensitive person who was devastated by the false accusation, yet in absence of mens rea or intention on the part of the appellants to drive the deceased to such a condition leaving him no other alternative but to commit suicide, this Court is not willing to hold that the appellants had abetted the commission of suicide by the deceased so as to attract the provisions of section 306 IPC against the appellants.

Even if it is held to be proved that the appellants had falsely accused the deceased and had assaulted the deceased, it seems to be a case of very irresponsible and unacceptable behaviour on the part of the appellants to indulge, but in absence of further evidence in this regard, it will be difficult to

hold that they had the intention and mens rea to commit the offence of instigating the deceased to commit suicide.

26. The prosecution has relied heavily on the discovery of the suicide note stated to have been written by the deceased. The learned counsel for the appellants had forcefully argued that the said suicide note was not examined by any handwriting expert and accordingly, the same ought not have been accepted. However, in view of the fact that the aforesaid handwriting of the deceased was identified by PW No. 4, who was his colleague and who was familiar with the handwriting of the deceased, the said objection may be ignored. However, even accepting the said note as written by the deceased prior to his death, the said note does not mention the names of the appellants. The suicide note merely stated that "committed suicide unable to bear the humiliation". As to who had humiliated the deceased and how he was humiliated was not mentioned. As held by the Hon"ble Supreme Court in Ramesh Kumar vs. State of Chhattisgarh (supra), the author of the aforesaid note is not alive and there is no one left in whose presence the said note was written and therefore, we cannot assume anything in the letter which is not there and inference have to be drawn from there based on the expression implied therein and in the light of other evidence adduced in the case. Since we have held that there is no adequate evidence available as to how the appellants had humiliated the deceased, except for the statement made by the PW No. 2, PW No. 3, PW No. 5 and PW No. 6 as told to them by the deceased, it may not be appropriate to come to a definite conclusion that the appellants had humiliated the deceased so as to instigate or compel the deceased to commit suicide.

27. Therefore, this Court is of the view that in the absence of a definite evidence on record to show that the appellants had the intention to provoke, urge or encourage the deceased to commit suicide and also to show that the appellants because of their words and deeds, had pushed the deceased to such an extent that there was no alternative for the deceased but to commit suicide, it may not be appropriate to fasten the culpability and liability to the appellants u/s 306 IPC. Accordingly, this Court is of the view that the charges against the appellants u/s 306/34 IPC have not been proved beyond reasonable doubt and consequently, the judgment and order dated 30.12.2003 passed by the learned Addl. Sessions Judge (Adhoc), Jorhat in Sessions Case No. 89(J-J)2002 convicting the appellants for suicide by Apurba Mahanta u/s 306/34 IPC is liable to be interfered with and accordingly is set aside.

However, before parting with the case, this Court would like to express its displeasure in the manner in which the investigation has been carried out by the Investigating Officer. This Court fails to understand the reasons as why any of the persons who could have been witness to the abuse and assault of the deceased by the appellants, were not examined by the prosecution. This Court also fails to understand why the said girl, Mompi Dey, who was the reason for the appellants to behave in the manner ascribed, culminating in the unfortunate

death of Apurba Mahanta, who was stated to have enjoyed a very good reputation in the society, was not examined at all. The examination of the said Mompi Dey could have thrown more light on the issue involved and also could have made the appellants criminally liable, if she had corroborated the prosecution version. This Court is also surprised that the Investigating authority did not make any endeavour to identify and examine such witnesses who could have testified about the assault of the deceased by the appellants. With the aforesaid observations and direction, the present appeal stands allowed. Accordingly, the judgment dated 30.12.2003 passed by the learned Addl. Sessions Judge(Ad-hoc), Jorhat in Sessions Case No. 89(J-J)2002 convicting the appellants u/s 306/34 IPC are set aside.

The learned Amicus Curiae be paid the fees in terms of the rules.