
(2011) 05 CAL CK 0089
In the Calcutta High Court
Case No : C.R.A. 252 of 2006

Shyamal Mukherjee and Another

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-05-2011

Acts Referred:

Evidence Act, 1872 — Section 32
Penal Code, 1860 (IPC) — Section 107, 306, 34

Citation : (2011) 3 CALLT 97

Hon'ble Judges : Syamal Kanti Chakrabarti, J

Bench : Single Bench

Advocate : Sekhar Basu and Mr. Rajdeep Majumder, for the Appellant; Sandipan Ganguly for the State in CRA 252 of 2006, for the Respondent

Judgement

Syamal Kanti Chakrabarti, J.—Since both the appeals relate to same incident and cause of action the same are taken up together for consideration and disposal. The present appeal No. CRA 252 of 2006, is directed against an order of conviction dated 30.03.2006 and sentence dated 31.03.2006 passed by the learned Additional Sessions Judge, Fast Track Court, Katwa, Burdwan in the Sessions Trial No. 1 of 2004 relating to Sessions case No. 57 of 2002 whereby and whereunder the two petitioners namely, Shyamal Mukherjee and Champa Mukherjee were convicted u/s 306/34 Indian Penal Code and were sentenced to suffer rigorous imprisonment for three years and to pay fine of Rs.5,000/- each, in default to suffer rigorous imprisonment for further period of six months. By same order three other accused were also convicted and sentenced as above. In a separate appeal being CRA 253 of 2006 those three other petitioners, namely, Deb Kumar Bhattacharyya, Bubu Bhattacharyya and Smt. Swati Banerjee nee Bhattacharyya have also assailed the same order of conviction and sentence being co-accused. The subject matter of both these appeals being same the same are dealt with in this composite order.

2. The facts leading to this case in brief are that one Smt. Monika Banerjee

lodged a written complaint dated 26.12.1999 at Katwa Police Station to the effect that on 26.12.1999 Anindya Banerjee @ Kabi, her youngest son committed suicide by hanging under acute pressure of persisting tension, torture, cruelty and instigation caused by all the aforesaid five accused persons who abetted him to commit suicide. At that time the victim was a mere student of class XII. It is further alleged that the victim fell in love with one Arpita Mukherjee, daughter of accused Shyamal Mukherjee and Smt. Champa Mukherjee. The victim Anindya was undergoing private tuition under accused Deb Bhattacharyya in the same locality. Thus, friendship built up between the victim and the accused Bubu Bhattacharyya, son of his teacher Deb Bhattacharyya and Swati Bhattacharyya, daughter of the said Deb Bhattacharyya. Accused Deb Bhattacharyya and his daughter Swati cherished a desire for giving marriage of Bubu with said Arpita. With this object Bubu and Swati used to report to the parents of Arpita with the object of generating ill-feelings in their mind and to form adverse opinion against Anindya and with the same object they circulated slanderous remarks in the locality to tarnish the image of Anindya as a characterless person. Believing such a scandalous rumour once accused Champa Mukherjee assaulted Anindya with a slap and threatened him to break his hands and legs by inducting local lads if Anindya comes to her residence again. All the accused also engaged hired Gundas for killing Anindya and used to threat and tease him. Lastly on 13.11.1999 under the leadership of accused Bapi Mukherjee (brother of accused Shyamal), Debu, Chandu Bairagya and others, Anindya was assaulted and they claimed a fine of Rs. 5.000/- from him. Under such acute pressure, physical and mental torture, cruelty and instigation the victim ultimately committed suicide. On receipt of such complaint investigation was undertaken by registering a case being Katwa P.S. Case No. 219 of 1999 dated 27.12.1999 u/s 306/34 Indian Penal Code which was resulted in filing of charge-sheet against all the accused persons. After completion of trial all the accused persons were convicted and sentenced as aforesaid.

3. Being aggrieved by and dissatisfied with such order of conviction and sentence, all the five accused persons have preferred the aforesaid appeals with the common defence that Arpita Mukherjee is a vital witness who has not been examined by the prosecution. The diary and Khata of the victim being Exhibits 2, 3 and 4 exhibited in this case to prove some incriminating materials against the accused persons was inadmissible u/s 32 of the Indian Evidence Act. The complaint was lodged 40 days after the incident but the delay has not been properly explained. Prosecution has tendered ten witnesses to prove the case of whom PWs 1 to 5 are the material witnesses testimony of whom is the basis of conviction. Of them PW 1 and 2 are the parents of victim, PW 3 is a rickshaw-puller who has been declared hostile, PW 4 is a friend of the victim and PW 5, a senior advocate of Katwa Bar, is a family friend and seizure list witness. Other witnesses namely, PW 6, a constable who took the dead body for postmortem, PW 7, SI who hold inquest report, PW 8 is the autopsy surgeon who conducted the autopsy and PW 9 and 10 the investigating officers are formal witnesses

having no personal knowledge about alleged torture and abetment to commit suicide. Under these circumstances impugned order of conviction and sentence are liable to be set aside.

4. Learned lawyer for the state respondent on the contrary has refuted the argument and claimed that out of the 10 witnesses PWs 3 and 4 are independent witnesses of whom PW 3 is an eye-witness to the incident of slapping of the deceased by the accused No. 5, Smt. Champa Mukherjee and he also heard both accused Nos. 4 and 5 abusing the deceased by saying that "can there be a rope not available to get at his (Anindya's) neck for hanging?" In fact, PWs 1 to 5 formed the sheet anchor of the prosecution case and the oral testimony of the witnesses has been corroborated by the documentary evidence namely, Khata (exhibits 3 and 4) and diary (exhibit 2) of the deceased from which it will be proved beyond reasonable doubt that the behavioral approach of all the appellants was the proximate cause of abetment of the victim to commit suicide, at a very young age. The testimony of PWs 1 and 2 are sufficient to substantiate the charge which is based on their uncontroverted testimony.

5. According to the prosecution the following conducts/facts proving such abetment to commit suicide have been well-proved by the prosecution to substantiate the charge u/s 306/34 Indian Penal Code. For the sake of better appreciation the same may be quoted below.

- i) There was a love affair between the deceased Anindya and Arpita;
- ii) The appellants used to look upon the said love affairs with disdain;
- iii) The appellants intended to tarnish the image of the deceased in the locality by displaying him as a boy of questionable character;
- iv) Recovery of two Khatas and one diary of the deceased by the parents of the victim subsequent to such commission of offence has corroborated the oral testimony of the prosecution witnesses and filled up the chain of circumstances leading to abetment to commit suicide:
- v) The statements of the deceased recorded in his diary and khata. exhibits 2, 3 and 4, speak for themselves the reason for committing suicide;
- vi) PW 3 who happens to be a rickshaw-puller though declined hostile has approved point no. (i) above because he used to carry the deceased Anindya to his tutorial homes since his boyhood and as such became acquainted with the said love affairs of the victim:
- vii) The testimony of PW 3 with regard to the incident of slapping by accused No.5 to deceased Anindya and direct instigation by accused Nos. 4 and 5 abetting Anindya to commit suicide by hanging and noticing the deceased weeping and telling him that the deceased was driven out by accused No. 1 from his tutorial home on the issue of love affairs have gone totally unchallenged;
- viii) Though PW 4, friend of the victim, in his cross-examination has expressed

his helpless situation leading to inability to explain of what actually prompted the deceased to commit suicide, but he has testified that the victim used to maintain diary and khata being exhibits 2, 3 and 4 and those documents have filled up and completed the chain of circumstances which according to PW 1 led her to a firm conviction that her son has been victimized by the acts and deeds of the appellants.

Therefore, according to the learned lawyer for the state respondent the learned Trial Judge has rightly convicted all these accused persons against whom the charge has been brought home and the sentence is equally proportionate to the offence committed. There is no merit in the appeal which should, therefore, be dismissed.

6. From the rival contention of the parties the following points are now to be considered:

- i) Whether delay in lodging the FIR has been properly explained;
- ii) Whether the diary and khata of the victim being exhibits 2, 3 and 4 are admissible in evidence and can be relied upon:
- iii) Whether the conduct of the appellants as alleged are sufficient to hold that they have abetted the victim to commit suicide:
- iv) Whether the conviction and sentence under appeal are sustainable in law.

7. So far as point no. (i) is concerned, it appears that admittedly there has been a delay of about 40 days in lodging the FIR (exhibit 1). As per testimony of PW 1, Monika Banerjee, mother of the victim, her son committed suicide on 16.11.1999 and the complaint was lodged on 27.12.1999. The FIR-maker in her testimony has explained the delay on account of mental" agony of the parents for sudden shock for painful death of their beloved son. In her written complaint also she has narrated the entire incident and claimed that after the death of her son, she recovered the diary and khata of the victim from which she came to know the alleged incident of continuous torture, threat, abetment to commit suicide etc., but on account of physical and mental derangement of the parents and other members of the deranged family there has been delay in lodging the FIR. The learned Trial Judge has held that such delay has been properly explained in paragraph 35 and 36 of his judgement. The reason is based on two grounds. It is observed that the incident came to the knowledge of the parents of the deceased from two-fold sources. First one came to the knowledge of the parents while victim Anindya narrated the entire incident together with the militant activities of the accused persons on the preceding date of commission of suicide and the second source is the discovery of the diary and khata of the deceased by PW 1 and her husband PW 2. The learned Trial Judge has observed that the sudden death of the youngest son by commission of suicide had caused massive pains and grief with initial tension suspending their mind. This state of mental aspect is perceivable on account of the spell of time taken to reach some level of

tranquility to overcome the situation. After having the knowledge about the fact of suicide the FIR was filed and so the learned Trial Judge has discarded the defence contention regarding delay in lodging the FIR. From the aforesaid facts and surrounding circumstances he has held that the delay in lodging the FIR has been reasonably explained by the deranged parents and such delay cannot be taken as a ground for disbelieving the prosecution story. But the fallacy of such contention will be proved by the conduct of PWs 1 and 2 from which it appears to me that both of them have suppressed the truth which is subsequently discussed in considering the merit of this case. Their wilful suppression of prior knowledge of the different incidents relating to the sad affairs of the victim with Arpita prior to commission of suicide as noted in exhibits 2 and 3 remained unexplained and for such deliberate suppression of fact it is difficult to hold that such delay has been properly explained.

8. So far as the second point is concerned, it appears that the learned Trial Judge has specifically dealt with the matter in paragraph 25 of the impugned judgement. Section 32 of the Evidence Act deals with the relevancy of cases in which the statement of relevant fact by person who is dead or cannot be found. Illustration (1) of the said section deals with the provision which is quoted below:

When it relates to cause of death. - When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question.

9. Since the contents of the diary do not disclose the actual facts of committing suicide it cannot be treated as a dying declaration in terms of section 32 of the Indian Evidence Act.

10. Learned lawyer for the state respondent has contended that the above exhibits 2, 3 and 4 are admissible evidence u/s 32 of the Indian Evidence Act and the learned Trial Court has rightly relied upon the documentary evidence along with the oral testimony of the prosecution witnesses to determine the guilt of the accused. In this connection he has referred to and relied upon the principles laid down in the case of Dalvir Singh v. State of UP, reported in 2004 C.G. Lr (SC) 843 and Ramesh Kumar Vs. State of Chhattisgarh, . In Dalvir Singh's case it has been held that the letter written by the deceased wife prior to her death addressed to her husband disclosed the cause and circumstances of her death. Such letter is admissible u/s 32 of the Indian Evidence Act. In Ramesh Kumar's case it has been held, inter alia, that the author of letter namely, the deceased wife is not alive. There is no one else in whose presence the letter was written. It is, therefore, not permissible to read anything in the letter which is not there.

The letter has to be read as it is and inferences have to be drawn there from based on the expressions employed therein and in the light of other evidence adduced in the case. Relying upon both the principles I hold that since the exhibits 2, 3 and 4 were admitted without any objection from the defence, the same is admissible in evidence and the documents can be looked into along with the oral testimony of the prosecution witnesses to determine the alleged guilt of the accused. Therefore, I hold that the learned Trial Judge has not committed any error in relying upon the said exhibits 2, 3 and 4.

11. So far as the third and fourth points are concerned, it is now to be looked into as to the role played by each appellant in the alleged offence of continuous physical and mental torture inflicted upon the victim as alleged by the PWs. All the accused persons have been held jointly responsible for abetting the victim to commit suicide for which the learned Trial Judge has found all of them guilty of the offence punishable u/s 306/34 Indian Penal Code. Section 34 Indian Penal Code provides that when a criminal act is done by several persons in furtherance of the common intention of all, each of such person is liable for that act in the same manner as if it were done by him alone. But it has been set at rest in the case of Chittarmal and Moti Vs. State of Rajasthan, that a clear distinction is made out between common intention and common object. Common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds or preconcert. In the instant case the learned Trial Judge has not discussed in what way the prosecution has been able to prove prior meeting of mind of all the five accused persons or their preconcert.

12. FW 1, the FIR-maker has in fact reiterated the contents of the FIR in course of her examination. She has claimed that her deceased son Anindya and Arpita Mukherjee, daughter of both accused Shyamal Mukherjee and Champa Mukherjee had been receiving private study in mathematics under the guidance of tutor Bimal Pal attached to Bharat Bhavan, a local school. In this way both Arpita and her son developed amity between themselves. Accordingly her son used to visit the house of Arpita, daughter of accused Shyamal Mukherjee and Champa Mukherjee. By virtue of such practice her son was fond of all the family members of Shyamal Mukherjee in Mondal Para. Co-accused Deb Bhattacharyya also resides in that Mondal Para. Her son has also studied in the house tutor Swati while he was a student of mere class V-VI. Her son had disclosed the fact of having amity with Arpita before the said tutor Swati and her brother Babu. The said Swati and Babu narrated the episode of such amorous affairs between her son and Arpita before accused Shyamal and Champa Mukherjee. PW 1 claims that Swati and Babu had the intention to degrade and malign the position of her son in their locality, No date has been mentioned when Swati and Babu disclosed such fact to the aforesaid accused. However, she has claimed that Swati had the intention that her son may be reported in the locality as a characterless person or so called Babu" of the earlier ages who had least respect for any morality. She has further alleged that being influenced and biased Smt. Champa Mukherjee

one day slapped her son in the open street and threatened him that he would be thrown away in the street after breaking his arms and legs with the help of para people. Testimony of PWs 2, 3 and 4 have tried to corroborate PW 1 and the contents of FIR in their own ways.

13. Then comes the averment relating to conspiracy or meeting of mind. PW 1 further claims that accused Shyamal, Champa, Babu, Swati and Deb Bhattacharyya in the same manner continued in making publicity against her son as a bad-character and ill-reputed person. She has also stated that under the leadership of accused Shyamal those accused persons deputed said Bapi to do and organize all these things. Bapi Mukherjee, Chandu Bairagya under the instruction of Shyamal Mukherjee organized a group of anti socials namely, Chandu Bairagya, Debu Ghosh and some other for the purpose of teasing, assaulting heckling and even killing her son if he takes any other entry into their para. Here also PW 1 is silent regarding the place, time and date while all these persons met together and decided to indulge in the above activities in furtherance of their common intention. Therefore, the meetings of the mind is conspicuous by its absence from the alleged isolated conduct of the FIR named accused.

14. PW 1 had further averred that lastly on 13.11.1999 Bapi, Babu. Chandu. Debu Ghosh and some others belonging to an antisocial group under the active instruction, instigation and abetment of accused Shyamal Mukherjee and Champa Mukherjee encircled her son, demanded a cash of Rs. 5,000/- and physically assaulted him. Being terribly frightened out of such incident and under grave panic her son ultimately committed suicide on 16.11.1999. Interestingly she has disclosed a diverse interest of accused Debaprasad Bhattacharyya. She has claimed, "Debbabu had a desire to give marriage of his son Babu with Arpita. On 14.11.1999 my son reported all the matters to me."

15. From the nature of the above allegation I find that two conflicting interests were allegedly operative in the mind of the accused. On the one hand parents of Arpita were threatening the victim and asking him not to disturb their daughter and come to their house or para, as the case may be, obviously, for protection of the interest of their daughter, on the other hand Debaprasad Bhattacharyya and his son had the intention to dissociate the victim from Arpita so that he may conduct marriage of his son with the said Arpita. Unfortunately, the said Arpita, daughter of accused Shyamal Mukherjee and Smt. Champa Mukherjee has not been examined in this case. But from the very nature of such conflicting interest of different groups of persons it is difficult for me to believe that all the five accused persons had ever any meeting of the mind or any common intention to instigate the victim to commit suicide. Because if it is the intention of Debbabu to dissociate the victim from Arpita so that he may negotiate marriage of his son with Arpita, he will never instigate the victim to commit suicide which will ultimately frustrate his object. His interest is quite different from the so called interest of accused Shyamal and his wife Champa Mukherjee. It is alleged that

they were threatening the victim with the object of refraining him from following their daughter or to mix with their daughter in any way. Therefore, neither there is any evidence to show that all these five persons ever met together to hatch up any conspiracy for the purpose of instigating the victim to commit suicide. Therefore, the essential ingredients of section 34 Indian Penal Code is conspicuously absent in the instant case.

16. Abetment of a thing has been defined u/s 107 IPC in the following way:

Section 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 aids, by any act or illegal omission, the doing of that thing.

17. Thus, it is evident that there is an element of intentional aids by any act or illegal omission, the doing of that thing. In the instant case proximate cause of suicide of the victim has been mainly ascribed to two incidents. PW 1 has claimed that one day being influenced and biased accused Champa Mukherjee in the open street slapped her son threatening him that he will be thrown away in the street after breaking his arms and legs with the help of para people. In his diary the victim has recorded this incident. He wrote in his Khata (Exhibit 3) under chapter 18 in the following way:

One day on way back from my school I was standing in front of Arpita's house. All on a sudden hot water was poured on me from their neighbour's house, i. e., Gour's house. It was a bit shocking for me. But I could not tell it to anybody else. In spite of that I used to go there regularly. Whenever I felt dejected, I used to go there for getting some sort of relief. One day when I was standing there suddenly Kakima (Arpita's mother) came to me and asked me what I was doing there. Before reply to her question she held my ear and slapped me. She further asked me not to go there any further. She also threatened me to break my arms and legs with the help of local people if I go there any further. Accordingly I returned from that place. Returning home I was very upset and even started crying. I was amazed by her (Arpita's mother) behaviour. I used to respect her (Arpita's mother) just like my own mother. Even she used to take care of me. It was surprising for me that the same woman is threatening me to break my arms and legs with the help of local people. Although I do not have any regret that she slapped me. Because she is tike my mother. And mother can love her child as well as slap him too. (English rendering).

18. Therefore, eventual reaction of the assault by accused Champa Mukherjee cannot be treated as a cogent reason or proximate cause for which the victim was forced to commit suicide long after such assault. If the statement of the deceased is accepted as true, it is evident that he was regularly disturbing the inmates of the house of Arpita and was staying there and looking for Arpita being

a deserted lover.

19. In a civic society every citizen has a right to protect the interest of his or her son. PW 2 Anup Banerjee is the father of the victim and is a practicing advocate of Katwa Court for about 26 years. He has admitted this cardinal truth in his cross-examination in the following way:

Every parents are to rule out irregular activities when ever they find it in their son.

20. If any unruly son regularly disturbs the inmates of a girl's house in the locality is it not unbecoming for a student of class XII and is there no element of right to protect the interest of the unmarried daughter Arpita whose parent had tried to protect her and to take steps so that the victim could not disturb their daughter and family members and does not do anything which will ultimately discredit them in the society?

21. The learned Trial Judge has proceeded to examine the veracity of the prosecution witnesses assuming that there was love affairs between the victim and Arpita. In this connection a love letter (Exhibit 4) of Arpita addressed to the victim was recovered from the house of the deceased. The same was, however, not properly approved and objected to by the defence and as such it is unsafe to rely upon such document. Yet after careful reading of the said letter with prying curiosity it appears that Arpita in the said letter entreated the victim to improve his conduct and to prosecute his studies in a better way so that in future she may marry him. The letter, in fact may be treated as a source of inspiration of the victim to prosecute his studies properly and not to indulge in flattery or discredit the entire family members of Arpita in the estimation of the locality in the manner he was choosing her and trying to accost with her with the consequential refusal.

22. It appears from the diary of the victim that once he tried to collect one photograph of Arpita. Collecting some money he purchased one film and was waiting on a road to take a snap with the help of his friend Joy. He has narrated it in chapter 12 of Exhibit 3 in the following way:

One day when Arpita was returning from Ranenbabu's private coaching Joy da took a snap of her. I identified Arpita to Joy da. We together took a few more snaps of her. After that I sent the reel to the studio for getting ? them washed. It was a charming experience for me. I thought that my desire will be fulfilled, I will get Arpita's photo. But alas, after washing of the photos I find that the snap that I took of Arpita's parents has been destroyed and the other snap taken by Joy da is of Arpita's rear view. This was upsetting for me. I kept those photos along with my books. But my mother traced them out and asked me when did I take those snaps and what is the source of the money. She also saw the rear view snap of Arpita. As a consequence I was severely reprimanded and was also beaten. My mother asked me not to leave home any more. I had to stay home at that time sparing private coaching and some other essential works.

(English rendering).

23. This gives rise to reasonable suspicion as to why the FIR-maker, PW 1 claimed that she was quite innocent till the last assault of her son on 13.11.1999 and even after knowing all these things she remained silent for discovery of all these diaries and khata to lodge the complaint after 40 days of suicide? From the very beginning of the episode it is reflected that parents on the side of the victim as well as Arpita were always trying to protect the interest of their own son or daughter, as the case may be, in their own way which every citizen of ordinary prudence is expected to do. In doing so neither of them can be blamed.

24. From the testimony of the prosecution witnesses it appears that no love affairs was at all developed in between Arpita and the victim. It is the passion of adolescence which instigated the victim to run after Arpita and it was his longing to marry Arpita. Swayed by such passion he was trying to follow her to which Arpita and her parents had declined to concede and indulge. This aspect has not at all been considered by the learned Trial Court in analysing the motive of commission of suicide in the factual matrix delineated in the four corners of the FIR as well as the testimony of prosecution witnesses. Therefore, it is unsafe that assault upon the victim by accused Champa Mukherjee on a date which is unknown is not the only proximate cause of death of the victim and this can not be treated as a valid ground of abetment to commit suicide.

25. Another conflicting situation is forthcoming from the testimony of PW 1 and other witnesses. The incident of slapping was a few days prior to 16.11.1999 but the last incident narrated by PW 1 is quoted below:

Lastly on 13.11.1999 Bapi Mukherjee, Babu Bhattacharyya, Chandu Bairagya, Debu Ghosh and some others belonging to an antisocial group under the active instruction, instigation and abetment of accused Shyamal and Champa Mukherjee encircled and caught my son, demanded a cash of Rs. 5,000/- and physically assaulted him. Some how my son escaped from their hands. Being terribly frightened out of such incident and under grave panic, my son ultimately committed suicide. On 16.11.1999 my son Anindya died.

26. Therefore, the proximate cause of alleged abetment is the incident of 13.11.1999. On that date the victim was surrounded and assaulted by Bapi Mukherjee, Babu Bhattacharyya, Chandu Bairagya, Debu Ghosh and some other persons who demanded Rs. 5,000/- from him. The victim committed suicide two days thereafter. Unfortunately no FIR was lodged against them by the parents of the victim during his life time to protect and extend any moral support to him.

27. The victim had a tendency of introspection. Once his friend Pritam (Nidhi) advised him to purchase a revolver by stealing gold ornaments of his mother. With that he was advised to display in front of Arpita a scene of attempting to commit suicide so that out of fear Arpita is forced to concede to reciprocate his love. But he has not accepted such proposal. The mental reaction is recorded in chapter 23 of Exhibit 3 in the following way:

I thought over it intensely. Fortunately the thought went to a positive direction. Otherwise, had it been in a negative direction I would have become an antisocial. I could have lost everything that I had-for ever. But my good conscience refrained me from doing so. I realised that I was going to deal with a woman's life whimsically. And I should not do that because when I have no power to establish a woman's life, I have no right to ruin her life.

(English rendering).

28. Therefore, in absence of reciprocity as a dejected lover a sense of desolation and lamentation in the mind of the victim was prevailing and gradually subjecting him to mental depression and despondency.

29. Reluctance of Arpita to mix with the victim has already been admitted and will be reflected from chapter 21 of the Khata being Exhibit 3. One day Arpita was returning home after undergoing private tuition. The victim followed her. The incident is recorded by the victim in the following way:

Arpita moved forward in her cycle, I chased her in my cycle and finally was able to catch her. I asked her to listen to me. But she did not reply and started moving forward. I again asked her kindly to listen to me just for once. Then she threatened me to slap and also addressed me as a "beast". I asked her again to listen to me. I told her that if she desires she can even slap me. Then she told a man standing in front of the "Biscuit ghar" that I was creating nuisance with her. After that she left the place. Then the man tried to heckle me but left the place only giving a few sermons immediately when I brandished my wrist-muscle. I cried all through my way to home. Somehow I consoled myself and entered home. My mother asked me why Arpita did not come with me. I falsely stated that Arpita is not in Katwa. My mother could guess my mental condition and replied that she (my mother) knew that Arpita will not come. I could not tolerate it any more and finally decided that I will finish myself.

(English rendering).

30. Therefore, in the true sense of the term this incident prompted the victim to take a decision to escape from reality and to finish himself by any means on account of his failure to accept such grim reality.

31. Prosecution has, however, tried to prove that the assault upon son of PW 1 by the aforesaid persons on 13.11.1999 was the proximate cause of abetment to commit suicide. The learned Trial Judge has also believed this theory on the basis of surrounding circumstances. PW 1 admits in her chief that on 13.11.1999 Bapi Mukherjee, Babu Bhattacharya, Chandu Bairagya, Deba Ghosh and some others belonging to an antisocial group under the active instruction, instigation and abetment of accused Shyamal and Champa Mukherjee encircled and caught her son, demanded a cash of Rs. 5,000/-and physically assaulted him somehow her son escaped from their hand. It is her specific imputation "being terribly frightened out of such incident and under grave panic my son ultimately

committed suicide". But where is the proof of "active instruction, instigation and abetment" of accused Shyamal and Champa Mukherjee for such incident of 13.11.1999? It is equally curious to note her further admission "on 14.11.1999 my son reported all the matters to me" where the victim committed suicide on 16.11.1999. In the FIR PW 1 has also stated that on 14.11.1999 her son disclosed all the incidents to me, my family members and family friends, 1) Anup Banerjee (father). 2) Sushanta Chatterjee @ Hola (maternal uncle), 3) Jaya Chatterjee (wife of youngest maternal uncle), 4) Prasanta Chatterjee, son of Sudhir Chatterjee, 5) Soumitra Ganguly, son of Swapan Ganguly, 6) Mithu Pandit, daughter of Debdas Pandit, 7) Shankar Rudra, son of Sanat Rudra. 8) Bijoy De, son of Sunil De, 9) Sadhan Ghosh, son of Late Jnan Ghosh and many others. Is it normal human conduct in a group to remain inactive against the unprovoked assault upon the victim with demand of Rs. 5,000/- in cash by Babu, Chandu and others on 13.11.1999 even after commission of suicide on 16.11.1999? No FIR was lodged against them immediately after 13.11.1999 till 27.12.1999? This also makes the prosecution case more incredible so far as the claim of discovery of the Diary and Khata of the victim (Exhibits 2, 3, 4 etc.) as the first source of information regarding common intention and abetment of the victim by the accused to commit suicide is concerned. When the prosecution witnesses by their own conduct makes their story so unbelievable and inconsistent with normal human conduct the benefit of doubt arising out of such inconsistency should go in favour of the accused which is partly given by the learned Trial Court in acquitting accused Chandu Bairagya, Bapi Mukherjee and Deb Narayan Ghosh @ Debu though PW 1 alleged in her FIR and testimony that in their last assault on 13.11.1999 her son was terrified and committed suicide. I hold that the same benefit of doubt should also be bestowed upon the present appellants also.

32. The learned Trial Judge has placed on record the submissions made by the learned defence lawyer regarding inconsistencies in the oral testimony of PW 4, Soumitra Ganguly and PW 3, Shri Bijoy Dey and the version of the victim reflecting in his diary and khata (exhibits 2, 3 and 4). In doing so, the veracity of the testimony of the PW 4 has been called in question because PW 4 nowhere stated that he heard anything directly from the victim save and except the alleged fact that "one day accused Deb babu and Shyamal babu expelled him (Kabi) from their respective houses." The said Rickshaw-puller, PW 3 has been declared hostile. It was argued before the learned Trial Judge that if there is no distinctly mentioned allegation against any specified person the prosecution case will not stand. The alleged act of making a slap on 13.11.1999 by accused Champa Mukherjee is an embellishment clearly in the prosecution story subsequent to the occurrence of suicide. I do not find any finding of the learned Trial Judge on the evidentiary value of statement of PW 4 and testimony of PW 3. Equally fallacious is the allegation against the petitioner convict Smt. Swati Banerjee @ Bhattacharjee who was not directly involved in the alleged assault or intimidation. It is alleged that the accused Deb Bhattacharjee and his daughter Swati cherished a desire for giving marriage of their son/brother Babu with

Arpita. But in the entire state of affairs no overt act is proved beyond doubt as against this convict Swati Bhattacharjee. It has already been discussed that there is no common intention of all the accused persons to provoke or intimidate the accused so that he was compelled to commit suicide in the midst of their conflicting interest which also proves absence of mens rea required to prove the guilt of the accused.

33. In paragraph 46 of the impugned judgement the learned Trial Judge has discussed the role of accused Deb Kumar Bhattacharjee, a teacher in the locality and accepts that such a person is in possession of an attribute of having reasonable humanity and sensible responsibility in the matter of passing any comments against his private student belonging to teenage group who are basically prone to acquire the growing tendency of inciting feelings with various sentiment and emotion in the ascending order of attaining age by their easy nature. He has further observed that besides he being a father in his domestic life, he should not have taken part in saying scandalous remarks and got-up remarks as a tattler in the role of his son and teacher beyond his profession in the society which otherwise may, sometimes, bring misfortune to him after creating great loss to others as has been done in the instant case. This subjective observation cannot take the place of proof nor can it be accepted unilaterally only to decide the act of the accused. I think this should be equally applicable in considering the merit of the testimony of prosecution witnesses as well as other persons connected with the said affairs. It has already been pointed out that as in the FIR as well as in the testimony of PW 1 the victim narrated all the incident of assault upon him to her and others two days prior to committing suicide. If such a grave nature of assault upon her son has no impact upon the parents and as many as 8/9 inmates of their family, will it not exercise a negative stroke in the mind of a teen-ager who will certainly think that there is none in the world to protect his interest, uphold his dignity and to take legal action against his assailants though all of them were competent enough to confront the people who were inflicting mental and physical torture upon the Victim in so many ways for a continuous period? The victim had a legitimate expectation from his parents and other inmates to this effect but that has been belied by their" silence and non-interference which has ultimately withered away the last ray of hope for survival of a schoolboy badly in need of care.

34. Having considered the testimony of all the prosecution witnesses and the statement of the victim recorded by him in his diaries (exhibits 2 and 3) it appears to me that with all probability there were a number of incidents which may be treated as the proximate causes of his committing suicide. For instance, insult of Arpita on a day may be the cause as narrated in paragraph 28 above and noted in chapter 1 of his Khata (exhibit 3). This is a clear indication that refusal of Arpita to indulge in his love affairs and to listen him was beyond his tolerance and so he held "I could not tolerate it any more and finally decided that I will finish myself." This incident was known to PW 1 as per statement of the victim but there after the victim did not commit suicide immediately. But it may

be treated as a contributory factor. He tried to survive in his own way with his mental strength as long as he could but the second proximate cause might be the incident of 13.11.1999 when Bapi, Babu, Chandu, Deba and some others surrounded and assaulted him. Moreover, he narrated the incident to his parents and nine other persons on the following day i.e., 14.11.1999 who happens to be his near relations. But they remained silent and did not take any action against those persons. Therefore, this could also be a third proximate cause for committing suicide by way of revolt against his own family members from whom he got no mental support or sympathy, as the case may be. Where the mind of the victim is so saturated with scattered events having no common intention of its perpetrators and his unusual emotional response to it, how can the learned Trial Court arrive at a decision that the chain of circumstances remained unbroken without any proof of mens rea I have already pointed out that one group of people has alleged intention to secure marriage of the victim with their son while another group of accused had the intention to dissuade the victim from association of their daughter Arpita. Such conflicting incidents have not converged at any point of time to corroborate the prosecution case of concerted effort as proved with unbroken chain of circumstances leading to one inevitable conclusion that the accused persons had a common intention to inflict so much torture upon the victim at different places and at different interval of time which shall be treated as the proximate cause of his committing suicide. Their action in isolation may come under the mischiefs of criminal intimidation, simple hurt etc. but no action has been initiated for such acts by" the complainant party.

35. The rickshaw-puller, PW 3, Bijoy Dey has been declared hostile by the prosecution. Yet he claimed in chief that the victim had some love affairs with the daughter of accused Shyamal Mukherjee. Particularly, three days prior to his death he had noticed the victim in Shakaighat while some people were assaulting him. Thereafter, he took him to his home and detected his mental condition fraught with strong depression. If his statement is taken with the testimony of PW 1 for consideration it will be quite clear that all these sad incidents were within the knowledge of the parents of the victim. PW 1 admits in her cross-examination that "at the time of the said assault one rickshaw-puller named as Bijoy Dey witnessed the aforesaid incident and accordingly he reported to me." Surprisingly the de facto complainant did not take any action against the persons who were disturbing or insulting their son, assaulting him and tried to discredit him in the locality. The psychological pressure upon the victim in this way accumulated and mounted to its highest peak to which her parents are equally responsible. The instinct of love is a cardinal instinct of human being for which nobody can be blamed. But when such instinct affects the mind at adolescent period it is the duty of the parents to take care of such child. The attack upon the victim all along led the victim to frustration on account of lack of mental support from his parents as well as failure of Arpita and their family members to satiate his lust. Love can never be unilateral and it can never reach to any happy ending without reciprocity. The sheer silence and inaction of the parents while their son

was exposed to such conflicting situation also was operating in the mind of the victim as a contributory factor to escape from reality because his mental strength was feeble though radiological test conducted by his parents proved nothing abnormal. But this resistance power and mental strength varies in degrees from man to man for which nobody can be blamed. But the tendency of the parents to conceal their knowledge of what is happening regarding his son and Arpita affairs for a long time is proved by their conduct and such disclosure of the truth before the society forty days after the suicide of the victim clearly shows that the victim committed suicide as a helpless child in adolescence for which neither his parents nor the family members of Arpita nor even the accused Babu Bhattacharyya and his son and daughter can be prosecuted.

36. It is a denial of self-existence, revolt against his own family and rejection of the locality of a student's unilateral urge to run after a girl of that locality disapproved by the parents of both sides which brought about the tragic catastrophe.

37. The learned Trial Judge ultimately decided that after careful scrutiny of the entire evidence on record he has not been satisfied that the accused Chandu Bairagya, Bapi Mukherjee and Deb Narayan Ghosh @ Debu were found not guilty of any offence punishable u/s 306/34 Indian Penal Code. If, the said three accused who took active part in the alleged assault upon the victim on 13.11.1999 are found not guilty, how others will be responsible for committing the offence of abetment to commit suicide without proof of common intention? Therefore, if the benefit of doubt is bestowed upon those three persons all the present accused are equally entitled to claim such benefit as they are on same footing.

38. I find that on 19th March, 2004 charge was framed against eight accused persons including the present five appellants to the effect that on or about 15th day of November, 1999 at Goalpara, P.S. Katwa, District Burdwan one Anindya Banerjee @ Kabi, son of Anup Banerjee committed suicide at the unused kitchen in the first floor of their house by a criminal act of abetment of suicide done by them all in furtherance of their common intention and thereby having committed the offence punishable u/s 306 Indian Penal Code read with section 34 Indian Penal Code. But three of them are acquitted of the charge and the incident in which all those three persons are involved and referred to also by the victim in his diary also lend support to the defence contention that they were not actually responsible for the tragic suicide of the victim of; their individual conduct at any point of time can be treated as positive creation proximate to the time of occurrence in any way cannot be treated as the proximate cause of death of the victim.

39. Relying upon the principles reported in (2010) 1 SCC (Cri) 896, the learned lawyer for the appellants has claimed that there is no active role on the part of the appellants in the abetment by direct or indirect act of instigation or by doing such an act to facilitate the commission of suicide. The ratio of the Hon'ble Apex

Court in the said case of Amalendu Pal @ Jhantu v. State of West Bengal is quoted below:

Before holding an accused guilty of an offence u/s 306 Indian Penal Code, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to commit suicide. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of section 306 Indian Penal Code is not sustainable.

40. Relying upon the above principles and in view of the analysis of documentary and oral evidence on record I hold that prosecution has not been able to prove beyond reasonable doubt all the facts claimed under paragraph 5 above as the cogent reasons for which the present five appellants can be said to have committed any act or omission in their individual capacity or jointly which may be treated as abetment or proximate cause of the victim to commit suicide. I do not find any mens rea of all these appellants which has been translated in their action compelling the victim to commit suicide. Evil operates on mind which is reflected in human conduct but in the midst of alleged conflicting interest of all the accuse, it is difficult to believe that all of them had concerted effort to intimidate, coerce or vilify character of the victim with same ends. It is the natural instinct of every human being to protect his own dignity, interest of the family and interest of minor son and daughter. Otherwise there will be anarchy and incoherence in the society. If a student of class XII wants to love a girl who declines and for that reason the parents of such girl resist him and oppose his indecent conduct within a permissible limit, and parents of the victim also disapprove but fail to refrain him from such affairs, commission of suicide by such unscrupulous son cannot be treated as the indulgence or abetment of the neighbours or the unfortunate parents. In fact they were trying to resist him from such unethical as well as unsocial conduct in the usual manner sometimes by frowning and sometimes by affection. While convicting any person in such circumstances Court should think the ultimate consequence and impact of such conviction and sentence in the society. Thus what is tried by the prosecution to prove by oral testimony of ten witnesses, has been ipso facto disproved by the documentary evidence (Exhibits 2 and 3). Once the said Exhibits have been proved without objecting Court cannot ignore contents thereof because man may tell lie but documents cannot. Statement of the victim recorded in his diary runs counter to the prosecution case made out in the FIR and remained incompatible and unreconciled.

41. While convicting an accused the job of the Court is to administer justice with the two-fold objects. Firstly, it is directed for reformation of the convict and,

secondly, to restore balance in the social order which is imbalanced by the accused responsible for invading social order and the procedure established by law. If these dual aspects are to be achieved conviction of the appellants in such case can never be treated as sustainable in law because everybody will try to pick up a girl or woman of his choice and invite him in the courtship and in case of refusal and disinclination, he will commit suicide and thereby punish those law-abiding opposing people having right to preserve their own dignity and interest of the family. This will seriously affect social integrity as well as peace of the locality and will lead the civilised society, to the abyss of lawlessness or rules of jungles.

42. Considering all these aspects I hold that the prosecution has not been able to prove the case beyond all reasonable doubt and the benefit should go in favour of the convict/petitioners. Therefore, point Nos. (i), (iii) and (iv) are thus decided against the prosecution and point No. (ii) is decided in the affirmative. Considering all these aspects I hold that the instant conviction and sentence of the appellants are not sustainable in law and so the same are set aside and all the appellants are acquitted and released from their respective bail bonds. Both the appeals are thus disposed of.

43. Both the appeals are thus disposed of.

Urgent certified photocopies of this order, if applied for, be supplied to-the parties, on compliance of all requisite formalities.