

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRA 112 of 2018

Asha Roy

-vs.-

The State of West Bengal

For the Appellant	:	Mr. Kaushik Chowdhury, Ms. Busra Khatun,
For the State	:	Mr. Saswata Gopal Mukherjee, Ld. P.P. Mr. Sandip Chakraborty,
Heard on	:	05.07.2022, 14.07.2022, 19.07.2022, 26.07.2022 & 02.08.2022.
Judgment on	:	18.08.2022

Tirthankar Ghosh, J:-

The present appeal has been preferred against the judgment and order of conviction and sentence dated 19.01.2018 passed by the Learned Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur, in Sessions Trial No. 16(08)2013 arising out of Sessions Case No. 38/2013 thereby convicting the appellant under Section 306 of the Indian Penal Code and sentencing her to suffer Rigorous Imprisonment for two years and fine of Rs.5,000/- in default to suffer Rigorous Imprisonment for three months.

The genesis of the case arise out of Kaliyaganj Police Station case no. 292 dated 21.10.2011 under Section 306 of the Indian Penal Code on the basis of a written complaint addressed to the Officer In-charge Kaliyaganj Police Station by one Anil Roy (hereinafter referred as the 'complainant'). The complainant alleged that his son Bijen Roy was married with Asha Roy (appellant/accused) about 10 years ago and out of the wedlock two sons and a daughter were born. The couple did not have a peaceful married life and over trivial issues dispute cropped up which resulted in quarrel. The complainant several times tried to convince the parents and relations of her daughter-in-law but they were heedless over the issue. On umpteen occasions Asha Roy left for her matrimonial home but she was brought back, however, she had no interest to stay with her family but preferred to stay at her paternal home. Complainant's son Bijen Roy informed this to Naresh Roy (uncle of the appellant) but he insulted him by abusing that her niece would never stay at the house of a family of beggars. On 19.10.2011 the complainant's son had been to Mahadebpur, Kaliyaganj for bringing back his wife but the accused along with unknown villagers assaulted and humiliated his son and dragged him out of their house. Being insulted the complainant's son returned home on 20.01.2011 and at about 11.00 pm committed suicide by consuming poisonous insecticide. The complainant's son became frustrated at the misconduct and insult of the accused persons and as such committed suicide. The complainant holds Asha Roy, Golap Chand Prasad and Raja Roy alias Prasad responsible for

the death of his son and as such requested the police authorities to take action against them.

The police authorities on completion of investigation submitted charge-sheet under Section 306 of the Indian Penal Code against appellant and two others (referred above) on or about 29.11.2011. The case was thereafter committed to the Court of Sessions and finally transferred before the learned Additional District & Sessions Judge, 2nd Court, Raiganj, Uttar Dinajpur wherein charge was framed under Section 306 of the Indian Penal Code read with Section 34 of the Indian Penal Code.

The prosecution in order to establish its case relied upon PW1, Nikhil Ray, local resident and acquaintance of deceased; PW2, Anil Roy, complainant and father of the deceased; PW3 Saraswati Roy, wife of the younger brother of deceased; PW4 Sasthari Roy, mother of the deceased; PW5, Dulali Roy, relation, cousin of the deceased; PW6, Indranil Dasgupta, scribe of the FIR; PW7 Natu Chandra Sarkar, acquaintance; PW8 Mukta Pada Roy, local resident who signed the inquest report; PW9 Sudhir Chandra Barman, Home Guard who identified the body challan; PW10, Gajen Roy, younger brother of the deceased; PW11, Amai Barman, local resident; PW12, Swapan Das, signatory to the inquest report; PW13, Dr. Arabinda Tantri, Post Mortem doctor and PW14 Pinaki Sarkar, Investigating Officer.

The documents which were relied upon by the prosecution included Ext.1, written complaint; Ext.2, inquest report; Ext.3, signature on dead body

challan; Ext.4, dead body challan; Ext.5, Post-mortem Report; Ext.6, Formal FIR and Ext.7, rough sketch map with index.

PW1, Nikhil Roy, deposed before the Court that he knew Bijen Roy who died after consuming poison. The witness deposed that quarrel used to take place between Bijen Roy and his wife Asha Roy who used to torture him and always abused him by asking him to die as she needed no husband like him. Often the accused left for her father's house, leaving all the three children with the deceased, who had to bring her back. He identified all the three accused persons in Court and further deposed that all these three accused persons along with their local associates assaulted Bijen when he went there and as a result on the fateful day Bijen consumed poison. The witness also narrated that a salish took place prior to the incident at Mahadebpur, Kaliyaganj where accused Asha Roy disclosed that she would never go back with her husband, however, later she represented she would go back with her husband and on that particular date Bijen was successful in bringing her back. It has also been narrated by the witness that on the fateful day Bijen after returning from his father-in-law's house, consumed poison and fell down on the road side beside his house at Nehali Para. After receiving such information he rushed to the place and found that foam was coming out from the mouth of Bijen and he was in a restless condition. He was in his senses and he disclosed that he went to bring Asha back from her father's house wherein he was assaulted by the accused persons and others as such he has consumed poison. He was thereafter, shifted to Kaliyaganj Hospital and on that night he expired.

PW2, Anil Roy, complainant deposed that he had two sons Bijen Roy and Gajen Roy. He narrated that Bijen expired by consuming poison and over the said incident he lodged a complaint which was written by Indranil Dasgupta, he after understanding the same signed it. He identified his signature in the written complaint and proceeded to state before the Court that his son Bijen Roy was married to Asha Roy in the year 2001 and out their wedlock two son and a daughter were born who are presently staying with him. He stated that Asha Roy abused his son Bijen in filthy languages whenever he visited his in-laws house to bring her back and regularly insulted him by saying that he should die by consuming poison. On the fateful day Bijen consumed poison because he was assaulted by his wife when he went to bring her back from Mahadebpur. Complainant emphasized before the Court that it was Asha Roy who was responsible for the death of his son.

PW3, Saraswati Roy, is the wife of the younger brother of the deceased and also the younger sister of the accused Asha Roy. She narrated that the deceased and Asha Roy had three children who are aged about 10, 8 and 5 years respectively. According to her the deceased died by consuming poison and the reason behind such suicide was the torture inflicted on him by Asha Roy who often used to leave the deceased and stayed at the parental home. It has also been stated that over stray matters there were quarrel and she used to abuse the deceased by stating that she did not want a husband like him and as such he should die by consuming poison. The witness stated that in front of their house the deceased consumed poison and after hearing hue and cry they

rushed towards the place of occurrence and found that froth was discharged from his mouth and at that time he stated that he was assaulted by his wife when he went to bring her back, he could not bear the torture and as such he committed suicide being insulted. The witness also stated that the children of the deceased are still staying with them. The witness empathetically stated that the cause of committing suicide by consuming poison is the torture on the deceased inflicted by the accused Asha Roy.

PW4, Sasthari Roy, narrated the incident in the same manner as PW2 and PW3 and also stated that the deceased after consuming poison in front of their house was groaning and stated that he consumed poison as he went to bring his wife back when he was insulted and abused by stating that he should die by consuming poison. He also represented that he could not bear the insult inflicted by his wife. The witness stated that the deceased was immediately shifted to Kaliyaganj Hospital and holds Asha responsible for the death of his son.

PW5, Dulali Roy, is the cousin of the deceased who identified Asha Roy in Court and stated that Asha Roy is the wife of deceased Bijen Roy who committed suicide by consuming poison. The witness stated that whenever the deceased visited his house he used to divulge that his wife Asha Roy often abused him for his poverty and asked him to die. It was also stated that a Salish was held at police station where it was settled that after two days Bijen will go to his in-law's house to bring Asha Roy back and as such the deceased

had been to his in-laws house after two days when he was abused and assaulted by the accused Asha Roy in filthy languages, thus unable to bear such mental torture he committed suicide by consuming poison on the road situated in front of his house at Nihali Para. The witness holds Asha Roy responsible for the death of Bijen Roy.

PW6, Indranil Dasgupta is the scribe of the FIR. He identified the FIR which was admitted in evidence.

PW7, Natu Chandra Sarkar was an acquaintance of the family of the deceased. He was declared hostile as he represented before the Court that he was unaware regarding the incident and only heard from the local people that Bijen Roy died by consuming poison.

PW8, Mukta Pada Roy, is the signatory to the inquest report. He identified his signature in the inquest report which was admitted in evidence. He also stated that he heard that Bijen Roy died by consuming poison.

PW9, Sudhir Chandra Barman is a Home Guard who was posted at Kaliyaganj Police Station during the relevant period. He stated that he brought the dead body to morgue along with inquest report and dead body challan. He identified the dead body challan which was admitted in evidence.

PW10, Gajen Roy, younger brother of the deceased stated that his brother expired on 21.10.2011 after consuming poison. He came to know that the deceased consumed poison as he was groaning and foam was coming out

from his mouth. On enquiry the deceased divulged that he has consumed poison and on being asked the reason he stated that he consumed poison as he had gone to bring his wife back when his wife abused him, assaulted him, insulted him and unable to bare such mental torture he had to consume poison. The witness also stated that immediately they hired an ambulance and shifted the deceased to Kaliyanganj hospital. However, in course of treatment Bijen Roy expired in the midnight. Police also prepared his surothal report and obtained his signature on it. The witness identified his signature which was admitted in evidence.

PW11, Amai Barman is a local resident who deposed before the court that he heard that Bijen Roy died by consuming poison because of mis-conduct of his wife.

PW12, Swapan Das is a local resident who heard the incident of the deceased consuming poison because of the torture and insult inflicted by his wife. The witness was also signatory to the surothal report, he identified his signature in the surothal report which was admitted in evidence.

PW13, Dr. Arabinda Tantri is the post-mortem doctor who deposed that he performed the autopsy and found oily liquid amounting about 100ml which had the smell of organo phosphorous poison. He also deposed that there was no external injury and the cause of death was shock due to the effect of organo phosphorous poison. He prepared the post-mortem report of the deceased in

his own hand writing. He identified his signature on the report and as such the post-mortem was admitted in evidence.

PW14, Pinaki Sarkar is the Investigating Officer of the case who referred to the chronology of the process of investigation after the case was endorsed to him.

Mr. Kaushik Chowdhury, learned advocate appearing on behalf of the appellant submitted that even if the accusations which have surfaced in evidence are accepted to be true no offence can be said to have been committed which would bring the same within the ambit of 'abatement' as incorporated the provisions of Section 306 of the Indian Penal Code. Learned advocate drew the attention of the Court to the fact that deposition of the witness where it has been stated that the appellant often abused the deceased by stating 'he would die by consuming poison'. Learned advocate submitted that such term even if accepted to be true cannot be the foundation of a conviction under Section 306 of the Indian Penal Code. To that effect learned advocate relied upon M. Arjunan -Vs. - State represented by its Inspector of Police, (2019) 3 SCC 315 as also Sanju @ Sanjay Singh Sengar -Vs. - State of Madhya Pradesh, (2002) 5 SCC 371; the learned advocate also relied upon Heikrujam Chaoba Singh -Vs. - State of Manipur, (1999) 8 SCC 458; Girdhar Shankar Tawade -Vs. - State of Maharashtra, (2002) 5 SCC 177; Balbir -Vs. - Vazir, (2014) 12 SCC 670 to rebut the contentions advanced by the learned advocate appearing for the State

in respect of the consistent deposition of the witnesses as narrated by the deceased prior to the death.

Mr. Sandip Chakraborty, learned advocate appearing for the State drew the attention of the Court to the statement of the different witnesses and submitted that consistently it has been stated regarding the torture inflicted by Asha Roy upon the deceased Bijen Roy. Such torture included abuse, assault, insult and also hurling of filthy languages which was bound to cause reaction. Learned advocate for the State also pointed out that the prosecution evidence reflects regarding a salish taking place and the deceased having gone to his in-laws house at Mahadebpur to bring back his wife. The deceased prior to his death i.e. after consuming poison and before being shifted to hospital has stated regarding the purpose of consuming poison i.e. because of the insult, abuse, assault, torture being inflicted at his matrimonial home at the instance of his wife. It has been stressed that the chronology of evidence as narrated by majority of the witnesses are consistent and corroborates with the factum of death and its foundation being torture inflicted by the appellant. As such the finding of the learned trial Court according to the State is based on cogent reasons which cannot be interfered.

Before adverting further the decision relied upon by the learned advocate appearing for the appellant is required to be dealt with. In *M. Arjunan* (supra) relied upon by the learned advocate appearing for the appellant the essential

ingredients of Section 306 of the Indian Penal Code were dealt with in paragraph 7 which is as follows:

“7. The essential ingredients of the offence under Section 306 IPC are : (i) the abetment; (ii) the intention of the accused to aid or instigate or abet the deceased to commit suicide. The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide. Unless the ingredients of instigation/abetment to commit suicide are satisfied the accused cannot be convicted under Section 306 IPC.”

However, the facts of the case on the basis of which the Hon’ble Supreme Court arrived at its finding relate to a transaction wherein the appellant advanced a sum of Rs.80,000/- to the deceased and a promissory note was obtained. On or about 7th December, 2022 the accused demanded Rs.50,000/- towards interest and another Rs.50,000/- towards principle amount. On 21st June, 2003 in the presence of some witnesses deceased stated that he would discharge the entire loan amount but was unable to keep up his promise. Due to allege torture by appellant/accused and on 21.06.2003 at about 11.50 p.m. the deceased committed suicide. The deceased left a suicide note which stated that he was unable to repay the loan and as such compelled to take extreme step.

In Sanju @ Sanjay Singh Sengar (supra) relied upon by the advocate appearing for the appellant emphasis was made on the phrase to ‘go and die’

wherein relying upon an earlier judgment of the Hon'ble Supreme Court where it has been held that *"A word uttered in a fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation."* However, in the said judgment the Hon'ble Supreme Court analysing the facts of the case observed that the suicide by the deceased was not direct result of the quarrel which had taken place on 25th July, 1998. Paragraph 14 of the said judgment is quoted below:

"14. *A plain reading of the suicide note would clearly show that the deceased was in great stress and depressed. One plausible reason could be that the deceased was without any work or avocation and at the same time indulged in drinking as revealed from the statement of the wife Smt Neelam Sengar. He was a frustrated man. Reading of the suicide note will clearly suggest that such a note is not the handiwork of a man with a sound mind and sense. Smt Neelam Sengar, wife of the deceased, made a statement under Section 161 CrPC before the investigation officer. She stated that the deceased always indulged in drinking wine and was not doing any work. She also stated that on 26-7-1998 her husband came to them in an inebriated condition and was abusing her and other members of the family. The prosecution story, if believed, shows that the quarrel between the deceased and the appellant had taken place on 25-7-1998 and if the deceased came back to the house again on 26-7-1998, it cannot be said that the suicide by the deceased was the direct result of the quarrel that had taken place on 25-7-1998. Viewed from the aforesaid circumstances independently, we are clearly of the view that the ingredients of "abetment" are totally absent in the instant case for an offence under Section 306 IPC. It is in the statement of the wife that the deceased always remained in a*

drunken condition. It is common knowledge that excessive drinking leads one to debauchery. It clearly appeared, therefore, that the deceased was a victim of his own conduct unconnected with the quarrel that had ensued on 25-7-1998 where the appellant is stated to have used abusive language. Taking the totality of materials on record and facts and circumstances of the case into consideration, it will lead to the irresistible conclusion that it is the deceased and he alone, and none else, is responsible for his death.”

Learned advocate also relied upon Balbir (supra) for contradicting the argument of the State in respect of oral dying declaration. Paragraphs 20 & 21 of the judgment have been relied upon which is as follows:

“20. *It is well settled that an oral dying declaration can form basis of conviction if the deponent is in a fit condition to make the declaration and if it is found to be truthful. The courts as a matter of prudence look for corroboration to oral dying declaration. As we have already noted, the dying declaration of deceased Krishna Gir does not inspire confidence. One can perceive an effort to involve number of persons by giving their minute particulars. It does not appear to be a natural voluntary statement of a dying man. The prosecution could have infused some credibility in it if it had examined the driver of the car in which deceased Krishna Gir was taken to the hospital and Ramgiriji who was also in the car. It is not understood why such vital evidence is kept back. Thus, there is no corroboration to lend assurance to the dying declaration of deceased Krishna Gir. In this connection, we may usefully refer to Heikrujam Chaoba Singh vs. State of Manipur [(1999) 8 SCC 458 : 1999 SCC (Cri) 1460] where the deceased was stated to have made a dying declaration to his brother in the ambulance. There were four other*

persons in the ambulance. None of them was examined. This Court refused to place reliance on the dying declaration as the disinterested persons sitting in the van were not examined.

21. *In the instant case, admittedly PW-3 Prithvi Gir was very close to deceased Krishna Gir. He was the successor of deceased Krishna Gir. There was enmity between the accused and deceased Krishna Gir's followers. The prosecution should have, therefore, examined the driver or Ramgiriji who was in the car. This is an additional reason why alleged dying declaration of deceased Krishna Gir cannot be relied upon. Besides PW-3 Prithvi Gir's statement was recorded three days after the incident casting further doubt on the dying declaration. We shall advert to that aspect now."*

In Heikrujam Chaoba Singh (supra) paragraph 3 has been relied upon by the learned advocate appearing for the appellant for bringing to the notice of the Court regarding the norms to be followed in case of laying foundation of conviction on oral dying declaration. Paragraph 3 of the judgment has set out below:

"3. *An oral dying declaration no doubt can form the basis of conviction, though the courts seek for corroboration as a rule of prudence. But before the said declaration can be acted upon, the court must be satisfied about the truthfulness of the same and that the said declaration was made by the deceased while he was in a fit condition to make the statement. The dying declaration has to be taken as a whole and the witness who deposes about such oral declaration to him must pass the scrutiny of reliability. We are, therefore, called upon to examine the evidence of PWs 2 and 5 to find out whether the courts below were justified in relying upon their*

testimony and in believing the statements alleged to have been made by the deceased while being carried to the hospital in ambulance and thereafter while he was an indoor patient in the hospital itself. So far as the statement in the ambulance is concerned, it was made to PW 2 who is the brother of the deceased. PW 2 while he was coming in a jeep towards the scene of occurrence saw the ambulance van and, therefore, thought that his younger brother Hera Singh was possibly being taken in the same ambulance van and coming to know that his guess was correct boarded the ambulance van. He stated in his evidence that on enquiry about the injuries sustained by his brother, Hera Singh, the injured told him that he had been given blows by Heikrujam Chaoba Singh with a dao, Yamlemba Paka Singh with a hockey stick and another person with a lathi. In his cross-examination, he candidly admitted that there were three or four persons inside the ambulance when his brother told him the names of his assailants but none of those disinterested persons have been examined by the prosecution to corroborate the said PW 2. He also admitted in his cross-examination that those persons who were in the ambulance were present near him when his brother stated the words and yet the prosecution had not offered any explanation as to why none of those persons were examined who could have been disinterested persons deposing about the dying declaration said to have been made by the deceased inside the ambulance while he was being carried to the hospital. While according to the evidence of PW 2 the deceased told him that the appellant Chaoba Singh gave him a dao-blow but according to PW 5 to whom the deceased made a declaration in the hospital, the deceased told him that Chaoba Singh, the appellant held a thang and Paka Singh had a hockey stick. Intrinsically, therefore the so-called dying declaration made by the deceased to PW 2 is different from the declaration made by the deceased to PW

5. PW 2 happens to be the elder brother of the deceased. In the aforesaid premise, we do not think it safe to hold the evidence of PW 2 to be reliable and, therefore, the oral dying declaration as deposed to him by him cannot be pressed into service for bringing home the charges levelled against the accused appellant.”

In Girdhar Shankar Tawade (supra) relied upon by the learned advocate for the appellant relevant part of the paragraph 13 which called the principles of law are quoted below:

“13. In the normal course of events, we are aware that appreciation of evidence cannot be had under Article 136 but it would be a travesty of justice in our justice delivery system if such a bar is to linger on even on total misappreciation of evidence leading to utter perversity. The younger brother sent his cousin along with the cousin's husband (brother-in-law) to his sister's house so as to appreciate the situation in 1986, whereas the cousin's evidence on record is that the only visit taken place to Shobha's house was in 1988 — thus an inherent contradiction inter se leading to the term of credibility of the oral evidence and it is in this perspective that reliance thereon by both the trial court and the High Court stands totally misplaced resulting in utter perversity. Another piece of evidence available on record is the dying declaration of the deceased. It is well settled that dying declarations shall have to be dealt with due care and upon proper circumspection. Though corroboration thereof is not essential as such, but its introduction is otherwise expedient to strengthen the evidential value of the declaration. Independent witnesses may not be available but there should be proper care and caution in the matter of acceptance of the dying declaration as a trustworthy piece of evidence.”

I have considered the submissions of the learned advocates appearing for the appellant as well as that on behalf of the State. In fact, the oral dying declaration has gone un-challenged in evidence and the authenticity of the same was never challenged by the appellant. Number of witnesses have corroborated the factum that the deceased after consuming poison when he was lying near his house with foam oozing out stated that he had been to his in-law's house for bringing back his wife Asha Roy where he was assaulted, abused and insulted and unable to bear such humiliation and torture he consumed poison. PW1, PW2, PW3, PW4 and PW10 have repeatedly stated the same version. Additionally the parents, younger brother of the deceased as well as his wife, who also happens to be the sister of the accused/appellant, have reiterated the mental torture being continuously inflicted and the habit of Asha Roy of visiting her paternal home and staying over there at regular intervals ignoring his family and children.

The consistency and corroboration of the prosecution witnesses inspire confidence that the deceased had to terminate his life all of a sudden because of the mental torture inflicted upon him continuously for a considerable period of time and the last of the incident wherein he was abused, assaulted and insulted compelled him to take a drastic step. Consequently, the judgment and order of conviction of the learned trial Court do not call for any interference.

However, the appellant happens to be a lady having three children as such I am of the opinion that the sentence requires consideration, accordingly,

the sentence so passed by the learned Trial Court is reduced to a period of one year with the fine amount remaining un-altered.

Accordingly, CRA 112 of 2018 is partly allowed.

Records reflect that the appellant is on bail as such her bail bonds stands cancelled. She is directed to surrender before the learned trial Court immediately.

Pending Applications, if any, are consequently disposed of.

Department is directed to send back the Lower Court Records to the respective Courts and communicate this judgment, so that effective steps are taken by the learned trial Court.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)