

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 392 of 2012

Smt. Monimala Dey & Ors.

-Vs-

The State of West Bengal

With

C.R.A. 631 of 2013

Smt. Monimala Dey

-Vs-

The State of West Bengal & Anr.

For the Appellants : Mr. Jayanta Narayan Chatterjee
(Amicus Curiae)

For the State : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Manoranjan Mahata

Heard on : 06.10.2023, 19.02.2024,
17.05.2024

Judgment on : 05.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the impugned order no. 30 dated 30.05.2012 passed by the Learned Sessions Judge, Paschim Medinipur in Sessions Trial Case No. IV-Nov/2010 through which the Learned Sessions Judge made a complaint under Section 340 Cr.P.C., before the Learned Chief Judicial Magistrate, Paschim Medinipur for taking cognizance of the offence under Section 182 and Section 181 read with

Section 120B of the Indian Penal Code against the PW-1 Monimala Day, PW-2 Shyamal Das and PW-5 Satya Prasad Dey.

2. Criminal appeal No. 392 of 2012 arose out of an application under Section 341 of the Code of Criminal Procedure whereby the appellants expressed their grievance against the impugned order No. 30 dated 30.05.2005 passed by the Learned Sessions Judge, Paschim Medinipur in Sessions Trial Case No. IV-Nov/2010.
3. A complaint was received by the Kotwali Police Station which based on the same registered Kotwali P.S. Case No. 47/2010 dated 10.02.2010 under Section 306 of the Indian Penal Code against the opposite party/accused.
4. The aforesaid complaint precisely stated on 29th January, 2010 at about 01:30 P.M., the accused/opposite party lady assaulted Subhra Das, wife of Shyamal Das, when her husband was in Calcutta. The victim felt indignant and chagrined at such an assault in the presence of her adolescent child and at such an affront, ablazed herself. The son of the victim and the aged mother-in-law of the de facto complainant, i.e. appellant no.1 tried to save the victim thereby sustaining burn injuries. Initially the victim was admitted at Medinipur Medical College and Hospital and subsequently shifted to Nilratan Sarkar Medical College and Hospital and she expired on 02.02.2010. Instantly after the incident, the accused/opposite party left the house.
5. On conclusion of the investigation, charge-sheet being No.199/10 dated 28.06.2010 was filed under Section 306 of the Indian Penal Code against the accused/opposite party to which she pleaded not guilty and claimed to be tried.

6. The prosecution cited 10 witnesses and exhibited certain documents.
7. Learned Advocate appearing for the appellants as the Amicus Curiae submitted as follows:-

- i. PW-1/De-facto Complainant/Eye witness had clearly deposed the conduct of the accused person from the very date of her marriage with the family members till the date of the incident. She had clearly deposed the exact cause which led Smt. Shubhra Das to attempt suicide. She had further stated in details about the treatment which was meted out to the injured after the incident and the circumstances under which she died. She had further deposed the intention/motive of the accused in committing the chaos in the family and specifically the reason for committing the mental and physical torture upon the victim as she did not want her husband and children to stay in the same house. The victim was specifically targeted by her because of the fact that she was soft in nature and temperament. Her evidence tendered in the Examination-in-Chief could not be demolished in the cross-examination.
- ii. The deposition of PW-2/Husband of the deceased corroborated the evidence of PW-1 without contradictions.
- iii. The deposition of PW-3/son of the deceased/eye witness was in uniformity with the prosecution version with regard to the means-rea as also the actus-reus.
- iv. The cross examination of PW-5, the husband of the accused corroborated the evidence tendered PW-1 to PW-4.

- v. The daughter of the deceased who was also the eye witness of the incident, an eye witness to the incident reiterated the narrative of the depositions of the other prosecution witnesses.
- vi. The next witness who was examined was Dr. Sudev Saha, being PW-7 apart from corroborating the evidence of the other witnesses PW-7 in his cross examination had deposed that at the time of admission of the victim, one of the person who accompanied her namely, Bidyut Biswas disclosed to him that he was the brother of the patient and further stated that the patient was cooking in the kitchen and it was due to burst of the stove that she suffered burn injuries. The claim of the said Bidyut Biswas which was deposed by PW-7 in his cross examination was effectively a stray disclosure and could not be even considered as hearsay evidence. The statement of Bidyut Biswas was not sought to be proved by the defence by tendering him as a witness. Bidyut Biswas at no point of time was an eye witness to the said incident. A wide and stray contention was simply made by him to PW-7 being the Doctor at the time of admission. It was not important to prove whether Bidyut Biswas was even among the crowd who accompanied the victim to the hospital or was one of the by standers in the said hospital at the time of admission. No relevance can be attributed to such vague information and utterance of Bidyut Biswas which was made for reasons best known to him which may also be due to undue pressure and duress imposed upon him.

- vii. PW-8 was the post mortem doctor who conducted the post mortem examination of the deceased and corroborated the cause of death in her deposition which was due to the effect of Septic Absorption from infected Ulcers following burn injuries, ante mortem in nature.
- viii. PW-9 was the resident medical officer attached to the Midnapore Medical College and Hospital where the victim was initially admitted on the date of the incident who though corroborated the prosecution case and the depositions tendered by the other witnesses further stated that the victim had not given any version of the history of the injury which she suffered. He had further deposed before the Court that one of the patient parties present among the crowd who claimed to have accompanied the victim at the time of her admission stated that she suffered the burn injuries due to the burst of the stove at the time of her cooking.
- ix. PW-10 being the S.I. of Police had conducted the investigation in the instant case and submitted the charge-sheet. His deposition did not contradict the prosecution case.
- x. In the examination under Section 313 of the Code of Criminal Procedure the accused namely Smt. Dipali Dey had the scope of explaining her side of the story with regard to the alleged incident and its background which she did not avail of.
- xi. The judgment of acquittal passed by the Learned Trial Court was inter alia based upon the reasoning that the accused person in the instant case namely Smt. Dipali Dey who was on

the date of the incident aged about 46/47 years and thus would not be able to cause either any physical or mental torture upon the victim and that the allegation of torture was also not believable either in the absence or the presence of the other family members residing under the same roof and that the accused being an outsider came to reside in the same house only by virtue of her marital relation. It was also held by the Learned Court that if the allegations of torture against the accused were substantive then she would not be allowed to continue her stay in the house. Mere discrepancies which cropped up in the depositions of the witnesses were unnecessarily given great importance.

- xii. It was surprising that the Learned Trial Court sought to delve upon the conduct of the victim when she was on fire and was burning. It was reasoned that after the victim had caught on fire, she came out speedily from the thakurghor and entered into the bathroom to pour cold water on her though nothing prompted her to do so. It was further held that when a person would decide to commit suicide by ablazing herself then her subsequent conduct of attempt to save her life was against the probability. The Learned Court had failed to consider that the most powerful impulse of the human spirit was the fear of death and even if a person conducted the act of committing suicide yet he made a final attempt to save himself from eminent death once the process started.

- xiii. The Learned Court had never dealt with the corroboration of the evidence with each other and with that of the evidence on record. The Learned Court had also completely neglected the motive, the intention and the conduct of the accused which led to the occurrence of the incident.
- xiv. The Learned Trial Court had not dealt with the ingredients which were necessary for the commission of offences under Sections 306 and 498A of the Indian Penal Code, 1860 which were evidently attracted in the instant case, which further proved that it was the fit case for conviction.
- xv. Thus, the findings of the Learned Trial Court that the charges against the accused could not be proved in the trial and thus she was liable to be acquitted could not be sustained.
- xvi. Through the same order and judgement dated 18.05.2012 the Learned Trial Court held that the De-facto Complainant had committed the offence under Section 182/181 of the Indian Penal Code by lodging a false complaint and directed that P.W.1, P.W.2 and P.W.5 were liable to be prosecuted for commission of offences under Sections 182/181/120B of the Indian Penal Code, 1860.
- xvii. The appellants in C.R.A. 392 of 2012 assailed the impugned order no. 30 dated 30.05.2012 passed by the Learned Trial Judge wherein the show cause of the appellants were considered were false and fake and was rejected. In the aforesaid order it was held that the three appellants being the PW-1, PW-2 and PW-5 committed the offence punishable under

Sections 182/181/120B of the Indian Penal Code, 1860 by treating such copy of the order sheet as the complaint of the Court (Public Servant) and the three delinquent appellants were directed to appear before the Court of the Learned Chief Judicial Magistrate, Paschim Medinipore on 20.06.2012.

8. The Learned Amicus Curiae relied on the following decisions:
 - i. CHAJOO RAM V. RADHEY SHYAM AND ANR. Reported in 1971(1) SCC 774.
 - ii. K.N.MISHRA V. JIWAJI UNIVERSITY, GWALIOR reported in 1980 (Supp) SCC 415.
 - iii. IQBAL SINGH MARWAH AND ANR. V. MEENAKSHI MARWAH AND ANR reported in (2005) 4 SCC 370.
9. On 06.10.2023 when the instant appeal was taken up for hearing a report was submitted by the Inspector-in-Charge of Kotwali Police Station, Paschim Medinipore that the appellant no.3 in C.R.A. 392 of 2012 i.e. Satya Prasad Dey had expired on 27.01.2020 and the appellant no.1 and 2 who were still alive.
10. In view of the aforesaid facts and circumstances and in the interest of justice, it was the humble prayer of the Amicus Curiae that the Hon'ble Court might be pleased to drop the Proceedings in CRA 631 of 2013 and allow the prayer and quash and set aside the order dated 30.05.2012 in CRA 392 of 2012, more so considering the efflux of time and its effect/impact and the predicament which the appellants as well as the respondent would have to face, if the proceedings once again started.
11. The Learned Advocate for the State submitted that the prosecution in all its fairness tried to establish its case. The minor lapses should not be

amplified to demolish the case. The crux of the prosecution case being unhindered. The evidence of the related witnesses should not be disregarded due to its corroborative nature and both the appeals should be dismissed.

12. The Learned Sessions Judge as aforesaid in the impugned judgment dated 18th May, 2012 inter alia observed as follows:-

“The alleged incident took place on 29-01-2010. The said F.I.R. also has been lodged on the 13th day after the occurrence for which there is no legible, and reasonably acceptable explanation, which accordingly also added fuel to cast severe doubt upon the very sanctity of the averment of the F.I.R. or the prosecution case, rather, to my mind the allegations of F.I.R. and oral evidence of P.W.-1, P.W.-2, P.W.-5, P.W.-3 and P.W.-6 are held to be of utterly falsehood. But in view of the findings and ultimate decision about the charge, the court cannot shut its eyes down. I conclude and thereby hold that the contents of the F.I.R. as well as the evidence as adduced, specially by P.W.-1, P.W.-2, P.W.-5, P.W.-3 and P.W.-6 on oath, is out and out false, fabricated and tainted and such tendency of making false statements before public servant and giving false evidence on oath should have been equally rewarded to keep some departing example before the society to which we everybody do belong.”

13. Apart from the evidence of the related witnesses including PW-1 the de facto complainant, PW-2 the cousin sister of the de facto complainant, PW-3 the son of the deceased, PW-5 the brother of PW-1 and the husband of the accused/opposite party, PW-6 the son of the deceased

victim, PW-4, PW-7, PW-8, PW-9 and PW-10 were the official witnesses comprising of police and the doctors.

14. The evidence of the related witnesses revealed the presence of more than 100 persons assembled at the house of the de facto complainant and the victim. The Investigating Officer did not examine any of the independent witnesses to corroborate the prosecution story. The evidences of PW-7, PW-8, PW-9 and PW-10 are inter alia revealed as follows:-

- a) PW-7 during his cross-examination stated he learnt from the said Bed Head Ticket that the patient was conscious at the time when she was admitted in the unit. There was no respiratory distress at the time of admission. One Bidyut Biswas disclosed himself to be brother of the patient stated to them that the patient was cooking in the kitchen on stove which burst causing burn injury to the victim. The name of the informant had been noted on the said Bed Head Ticket. It had not been specifically noted that such mode of injury was stated to the unit by the informant. PW-7 volunteered – when the name of the informant had categorically been mentioned with the history of mode of injury, it could be implied that such statement was made by the informant, as it appeared from the Bed Head Ticket that the patient was conscious when she was admitted in the unit of the said Medical College and Hospital. The patient was referred to N.R.S. Medical College and Hospital by the Medinipur Medical College & Hospital.
- b) PW-8 deposed to have opined that the death of the patient was caused due to septic absorption from infected ulcers following burn

injuries as noted in the post mortem report – ante mortem in nature.

- c) PW-9 deposed during production and examination of said Subhra Das the patient was conscious. She personally did not give any version about the history of burn injury, but the patient party, who had brought her, had stated that the said burn injury had been caused due to stove burst while she was cooking and accordingly he had entered the said version of the patient party in the report. PW-9 during his cross-examination stated it was true that within the report (Ext.5) it was not mentioned by him *“that the patient party had divulged the history of injury”*. PW-9 voluntarily stated that if the patient herself made any statement in that event it was only specifically noted. It was true that along with Subhra Das, who had come with burn injury, he had also rendered emergency treatment to two other burn injured persons namely, Subham Das and Urmila Dey.
- d) PW-10 the Investigating Officer stated in his evidence on 10.02.2010 he had examined witnesses namely, Subham Das, Sananda Das, Shyamal Das and Satya Prosad Dey and recorded their statements under Section 161 Cr.P.C. From the P.O. he had seized one jarican having remnants of kerosene oil, one lighter in presence of witnesses. PW-10 identified the carbon copy of the seizure list dated 16.4.2010 and though it was carbon copy but on admission of the defence the seizure list was marked Ext.7. He had also collected the injury report and bed head ticket of Subhra Das, Subham Das and Urmila Dey from Medinipur Medical College

and Hospital. Those three documents were also certified to be true copy by the Record Section-in-charge of the said hospital. Bed Head Ticket bearing treatment charge of the aforesaid three persons were marked as Ext.8, 8/1 and 8/2. Since the patient Subhra Das had been shifted to N.R.S. Hospital he could not get opportunity to interrogate her. After completion of investigation of the case he submitted charge-sheet. During his cross-examination PW-10 stated that the victim Subhra Das died on 02.02.10 i.e., prior to taking up the case by him for investigation. It was true that the persons, whose names as closed neighbours have been mentioned in the sketch map were not examined by him. He had thoroughly searched the P.O. on the date of his first visit. He did not seize any match box or burnt match stick from the P.O. Within the seizure list he did not keep any mention specifically as to who stated that the jarican and lighter were used for the purpose of committing the alleged offence. He did not examine any tenant at the P.O. He also did not record any statement of another injured namely Urmila Dey.

The witness Shyamal Das (PW-2) did not state before him that the accused inured torture and ill-treatment to Subhra Das. PW-2 did not disclose to him that Subhra Das in hospital disclosed before him that the accused Dipali had poured kerosene oil on her person or that accused used to severely assault and torture her. He also did not disclose that PW-2 had taken Subhra Das to N.R.S. Hospital.

The witness Subham Das (PW-3) did not state before him that he made his 'Kakima' and mother separated when his 'Kakima' started assaulting his mother. He also did not state that his mother had set fire on her body inside the Thakurghar by pouring kerosene oil and by using gas lighter. He stated before him that his mother had used match stick for setting fire on her body. He did not state before him that his mother rushed inside the bathroom and poured water on her body.

The witness Kumari Sananda Das (PW-6) did not state before him since the time of going of her father to Kolkata on 28.01.10 his 'Kakima' (accused) started abusing all of them including her mother and the same continued till 29.01.2010. She also did not state that at the time of incident her mother was offering puja in the Thakurghar and the accused went to the Thakurghar and started abusing her mother and the accused started assaulting her mother by catching hold of her hair and on previous occasion also the accused had assaulted her mother. She also did not state before him that herself, her aunt and her brother rescued her mother from the clutch of the accused and the accused went upstairs and she was laughing and her mother started weeping sitting on a chair at the verandah and she and her brother gave her consolation. She also did not state to him that she went to the bathroom and heard the shout of her 'Kakima' that she alone would stay in the house and would not allow anybody to stay there. She also did not state to him that she somehow managed to complete her bath and after coming out from bathroom she saw

her mother in burn condition and her mother entered into the bathroom and poured water on her body and on getting the information she came to the house. He never visited the village Arboal within P.S. Patashpur, District – Purba Medinipur.

15. The most astonishing and striking feature of the entire episode was the presence of the de facto complainant. PW-1, PW-2, PW-3, PW-4 and PW-6 at the place of occurrence when the accused opposite party humiliated and vilified the victim. PW-6 the son of the deceased victim deposed to have tried to separate the victim and the warring opposite party at the time of the fracas, however none of these self-proclaimed eye witnesses accompanied the victim to the hospital to Nilratan Sarkar Hospital.
16. One Bidyut Biswas who was the brother of the patient mentioned the cause of the burn injuries sustained by the victim to PW-7 due to burst of stove. The said Bidyut Biswas who was the informant according to the independent, unbiased evidence of PW-7 was not examined by the prosecution nor cited as a witness by the Investigating Officer.
17. The victim being subjected to regular and repeated torture and insult by the accused opposite party was not reported to any authority prior to the incident. The husband of the opposite party i.e. PW-5 was out of station for pursuing his avocation being unaware of the domestic affairs at home, who was otherwise subjugated to his brother being provided him an opportunity of employment.
18. The de facto complainant and the other related witnesses present at the spot of melee were in a position to prevent the victim from committing suicide if at all she opted for the same by an instinctive, instigated and proximate reaction. The vacuum created by the conduct of the de facto

complainant and other related witnesses is unexplained as to how the victim reached the hospital with such severe burn injuries being unaccompanied by her son, her husband, the de facto complainant and other family members.

19. The observation of the Learned Trial Judge criticized while the Learned Advocate appearing as Amicus Curiae is unacceptable. The evidence of the Investigating Officer revealed PW-2, PW-3 and PW-6 deposing their versions before the Court for the first time without narrating the same before the Investigating Officer. The Investigating Officer did not examine the local people or the neighbours. He did not seize any match box or burnt matchstick from the place of occurrence. He further did not record any statement of another injured person, namely, Urmila Dey.
20. The entire process of investigation was shrouded with mystery and the deposition of the de facto complainant and the related witnesses appeared to be concocted and baseless for the purpose of indicting the present opposite party taking advantage of a vulnerable and unfortunate accidental incident to dispossess her from the family.
21. Section 340 of the Code of Criminal Procedure states as follows:

“(1) When upon an application made to it in this behalf or otherwise any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given evidence in a proceeding in that Court, such

Court may, after such preliminary inquiry, if any, as it thinks necessary,

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the first-class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court to which such former Court is subordinate within the meaning of sub section (4) of Section 195.

(3) A complaint made under this section shall be signed, -

(a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;

(b) in any other case, by the presiding officer of the Court.

[Or by such officer of the Court as the Court may authorize in writing in this behalf.] [Substituted by Act 2 of 2006, Section 6, for Cl (b) (w.e.f., 16-04-2006). Prior to its substitution, Cl (b) read

as under: - [(b) in by other case, by the presiding officer of the Court.]

(5) In this section, “Court” has the same meaning as in Section 195.”

22. Section 341 of the Code of Criminal Procedure states as follows:

“(1) Any person on whose application any Court other than a High Court has refused to make a complaint under sub-section (1) or sub-section (2) of Section 340, or against whom such a complaint has been made by such Court, may appeal to the Court to which such former Court is subordinate within the meaning of sub-section (4) of Section 195, and the superior Court may thereupon, after notice to the parties concerned, direct the withdrawal of the complaint, or, as the case may be, making of the complaint which such former Court might have made under Section 340, and if it makes such complaint, the provisions of that section shall apply accordingly.

(2) An order under this section, and subject to any such order, an order under Section 340, shall be final, and shall not be subject to revision.”

23. Section 195 of the Code of Criminal Procedure states as follows:

“(1) No Court shall take cognizance –

(2) (a) (i) of any offence punishable under sections 172 to 188
(both inclusive) of the Indian Penal Code (45 of 1860), or
(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

(except on the complaint in writing of that Court or by such officer of the Court as that Court may authorize in writing in that behalf, or of some other Court to which that Court is subordinate, [Substituted by Act 2 of 2006, Section 3 for "except on the complaint in writing of that Court, of some other Court to which that Court is subordinate" (w.e.f. 16-4-2006).

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon

its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court and includes a Tribunal constituted by or under a Central, Provincial or State Act, if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinarily original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

24. Section 181 of the Code of Criminal Procedure states as follows:

“Whoever, being legally bound by an oath or affirmation to state the truth on any subject to any public servant or other person authorized by law to administer such oath or affirmation, makes, to such public servant or other person as aforesaid, touching the subject, any statement which is false, and which he either knows or believes to be false or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.”

25. Section 182 of the Code of Criminal Procedure states as follows:

“Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant.

(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person,

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

26. Section 181 of the Indian Penal Code states as follows:

“(a) The accused to an oath or made the affirmation in question.

(b) He was legally bound to state the truth.

(c) Such oath or affirmation was administered by a public servant or by a person authorized by law to administer the same.

(d) While so bound by oath or affirmation the accused made the statement in question to such person.

(e) The statement was made touching the subject on which he was thereby bound to state the truth. The statement was false.

(g) The accused knew that his statement was false or had reason to believe it was false or did not believe it was true. A falsehood made in good faith that it was true will not expose him to penalty.”

27. Section 182 of the Indian Penal Code states as follows:

“a. Giving of an information to a public servant.

b. The information must have been known or believed to be false by the giver.

c. The information must have been given with the intention to cause, or knowing it to be likely that it will cause such public servant to do or omit anything which he ought not to do or omit to do if the true facts were known to him or to use his lawful power to the injury or annoyance of any person.

Unless all these ingredients are established by the evidence, the offence cannot be treated to have been committed.”

28. In ***Bandekar Bros. (P) Ltd. v. Prasad Vassudev Keni***¹ the Hon’ble Supreme Court held the following:-

“28. The Court first spoke of the broad scheme of Section 195 CrPC, which deals with three distinct categories of offences, and held that the category of offences contained in Section 195(1)(b)(ii) ought to be read along with the offences contained in Section 195(1)(a) and 195(1)(b)(i), which are clearly offences which

¹(2020) 20 SCC 1

directly affect either the functioning or discharge of duties of a public servant or of courts of justice. This was stated in para 10 of the judgment [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] as follows : (Iqbal Singh Marwah case [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , SCC pp. 380-81)

“10. The scheme of the statutory provision may now be examined. Broadly, Section 195 CrPC deals with three distinct categories of offences which have been described in clauses (a), (b)(i) and (b)(ii) and they relate to : (1) contempt of lawful authority of public servants, (2) offences against public justice, and (3) offences relating to documents given in evidence. Clause (a) deals with offences punishable under Sections 172 to 188 IPC which occur in Chapter X IPC and the heading of the Chapter is — “Of Contempts of the Lawful Authority of Public Servants”. These are offences which directly affect the functioning of or discharge of lawful duties of a public servant. Clause (b)(i) refers to offences in Chapter XI IPC which is headed as — “Of False Evidence and Offences Against Public Justice”. The offences mentioned in this clause clearly relate to giving or fabricating false evidence or making a false declaration in any judicial proceeding or before a court of justice or before a public servant who is bound or authorised by law to receive such declaration, and also to some other offences which have a direct correlation with the proceedings in a court of justice (Sections 205 and 211 IPC). This being the scheme of two provisions or clauses of Section 195 viz. that the offence should be such which has direct bearing or affects the functioning or discharge of lawful duties of a public servant or has a direct correlation with the proceedings in a court of justice, the expression “when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court” occurring in clause (b)(ii) should normally mean commission of such an offence after the document has actually been produced or given in evidence in the court. The situation or contingency where an offence as

enumerated in this clause has already been committed earlier and later on the document is produced or is given in evidence in court, does not appear to be in tune with clauses (a)(i) and (b)(i) and consequently with the scheme of Section 195 CrPC. This indicates that clause (b)(ii) contemplates a situation where the offences enumerated therein are committed with respect to a document subsequent to its production or giving in evidence in a proceeding in any court.”

29. *The chapter heading of Chapter XXVI CrPC, which contains Sections 340 and 341 was then referred to — the heading reading “Provisions as to Offences Affecting the Administration of Justice”, which according to the Court also indicated that the offences mentioned in Section 195(1)(b)(ii) are offences which directly affect the administration of justice. After referring to various judgments, the Court then explained the difference between Section 195(1)(c) of the Code of Criminal Procedure, 1898 and Section 195(1)(b)(ii) CrPC, 1973 as follows : (Iqbal Singh Marwah case [Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370 : 2005 SCC (Cri) 1101] , SCC p. 385, paras 19-20)*

“19. As mentioned earlier, the words “by a party to any proceeding in any court” occurring in Section 195(1)(c) of the old Code have been omitted in Section 195(1)(b)(ii) CrPC. Why these words were deleted in the corresponding provision of the Code of Criminal Procedure, 1973 will be apparent from the 41st Report of the Law Commission which said as under in Para 15.39:

‘15.39. The purpose of the section is to bar private prosecutions where the course of justice is sought to be perverted leaving to the court itself to uphold its dignity and prestige. On principle there is no reason why the safeguard in clause (c) should not apply to offences committed by witnesses also. Witnesses need as much protection against vexatious prosecutions as parties and the court should have as much control over the acts of witnesses that enter as a component of a judicial proceeding, as over the acts of parties. If, therefore, the provisions of clause (c) are extended to

witnesses, the extension would be in conformity with the broad principle which forms the basis of Section 195.’

20. Since the object of deletion of the words “by a party to any proceeding in any court” occurring in Section 195(1)(c) of the old Code is to afford protection to witnesses also, the interpretation placed on the said provision in the earlier decisions would still hold good.”

29. The Hon’ble Supreme Court in **Narendra Kumar Srivastava v. State of Bihar**² held the following:-

“13. It is clear from sub-section (1)(b) of Section 195 CrPC that the section deals with two separate set of offences:

(i) of any offence punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228 IPC, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court; [Section 195(1)(b)(i)]

(ii) of any offence described in Section 463, or punishable under Section 471, Section 475 or Section 476 IPC, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court. [Section 195(1)(b)(ii)].

14. On the reading of these sections, it can be easily seen that the offences under Section 195(1)(b)(i) and Section 195(1)(b)(ii) are clearly distinct. The first category of offences refers to offences of false evidence and offences against public justice, whereas, the second category of offences relates to offences in respect of a document produced or given in evidence in a proceeding in any court.

15. Section 195 CrPC lays down a rule to be followed by the court which is to take cognizance of an offence specified therein but contains no direction for the guidance of the court which desires to initiate prosecution in respect of an offence alleged to have been committed in or in relation to a proceeding in the latter court. For that purpose, one must turn to Section 340 which requires the court desiring to put the law in motion to prefer a

²(2019) 3 SCC 318

complaint either suo motu or an application made to it in that behalf.

16. Section 340 CrPC reads as follows:

“340. Procedure in cases mentioned in Section 195.—(1)

When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary,—

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the First Class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

(2) The power conferred on a court by sub-section (1) in respect of an offence may, in any case where that court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the court to which such former court is subordinate within the meaning of sub-section (4) of Section 195.

(3) A complaint made under this section shall be signed,—

(a) where the Court making the complaint is a High Court, by such officer of the court as the Court may appoint;

(b) in any other case, by the presiding officer of the court or by such officer of the court as the court may authorise in writing in this behalf.

(4) In this section, “court” has the same meaning as in Section 195.”

17. *Section 340 CrPC makes it clear that a prosecution under this section can be initiated only by the sanction of the court under whose proceedings an offence referred to in Section 195(1)(b) has allegedly been committed. The object of this section is to ascertain whether any offence affecting administration of justice has been committed in relation to any document produced or given in evidence in court during the time when the document or evidence was in custodia legis and whether it is also expedient in the interest of justice to take such action. The court shall not only consider prima facie case but also see whether it is in or against public interest to allow a criminal proceeding to be instituted.*

18. *This Court in Chajoo Ram v. Radhey Shyam [Chajoo Ram v. Radhey Shyam, (1971) 1 SCC 774 : 1971 SCC (Cri) 331] , held that the prosecution under Section 195 CrPC could be initiated only by the sanction of the court and only if the same appears to be deliberate and conscious. It emphatically held as under: (SCC p. 779, para 7)*

“7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury too readily and too frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge.”

19. *In Santokh Singh v. Izhar Hussain [Santokh Singh v. Izhar Hussain, (1973) 2 SCC 406 : 1973 SCC (Cri) 828] , this Court has held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to*

exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify the feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution.

20. *This Court in M.S. Ahlawat [M.S. Ahlawat v. State of Haryana, (2000) 1 SCC 278 : 2000 SCC (Cri) 193] has clearly held that private complaints are absolutely barred in relation to an offence said to have been committed under Section 193 IPC and that the procedure prescribed under Section 195 CrPC are mandatory. It was held that: (SCC pp. 281-82, paras 5-6)*

“5. Chapter XI IPC deals with ‘false evidence and offences against public justice’ and Section 193 occurring therein provides for punishment for giving or fabricating false evidence in a judicial proceeding. Section 195 of the Criminal Procedure Code (CrPC) provides that where an act amounts to an offence of contempt of the lawful authority of public servants or to an offence against public justice such as giving false evidence under Section 193 IPC, etc. or to an offence relating to documents actually used in a court, private prosecutions are barred absolutely and only the court in relation to which the offence was committed may initiate proceedings. Provisions of Section 195 CrPC are mandatory and no court has jurisdiction to take cognizance of any of the offences mentioned therein unless there is a complaint in writing as required under that section. It is settled law that every incorrect or false statement does not make it incumbent upon the court to order prosecution, but (sic) to exercise judicial discretion to order prosecution only in the larger interest of the administration of justice.

6. Section 340 CrPC prescribes the procedure as to how a complaint may be preferred under Section 195 CrPC. While under Section 195 CrPC it is open to the court before which the offence

was committed to prefer a complaint for the prosecution of the offender, Section 340 CrPC prescribes the procedure as to how that complaint may be preferred. Provisions under Section 195 CrPC are mandatory and no court can take cognizance of offences referred to therein (sic). It is in respect of such offences the court has jurisdiction to proceed under Section 340 CrPC and a complaint outside the provisions of Section 340 CrPC cannot be filed by any civil, revenue or criminal court under its inherent jurisdiction.”

(emphasis supplied)

30. The order in Sessions Trial No. IV of November, 2010 passed by the Learned Sessions Judge, Paschim Medinipur reflected as follows:-

“28 dt. 18.5.12

The female accused namely, Smt. Dipali Dey on bail is present along with her ld. Advocate.

This day is fixed for delivery of judgment.

The judgment is made ready and the same is delivered in open Court after reading over the relevant portion of my findings and the same is kept with the record. The operating part of which runs as follows:-

“That the accused Smt. Dipali Dey is not guilty of the offences punishable u/s 498A or 306 of I.P.C. and she is hereby acquitted u/s 235(1) Cr.P.C. and is set at liberty by being released from the bail-bond submitted in the case, and her concerned surety also is discharged from liability of said bail-bond.

Seized alamat, if any, though never was produced, be destroyed on expiry of period of appeal. In view of finding of the court since some legal steps are to be taken against PW1, PW2 and PW5, preserve the case record and its documents in the safe custody of the Head Clerk of the Judgeship for future reference.”

During formulation of such judgment after scanning the evidence on record I have arrived at the conclusion that the defacto complainant-Smt. Monimala Dey had presented the computerized F.I.R. absolutely on false contentions and simultaneously the said defacto complainant and in her aid PW2-Shyamal Das and husband of the accused namely, PW5-Satyaprosad Dey have also stated false evidence on oath before the court, for which within the findings in the body of the judgment, the defacto complainant Smt. Monimala Dey prima facie has committed the offence u/s 182 Cr.P.C. and equally the said PW1-defacto complainant, her husband PW5 and PW2-Shyamal Das, husband of the deceased, prima facie have committed the offence u/s 181 read with Section 120B of I.P.C. for which, of course, in view of the observation of the court they are supposed to have one opportunity of showing cause.

Therefore, issue copy of such order along with the relevant extract of the judgment bearing page no.1, 17 to 21 to the defacto complainant, Shyamal Das- husband of the deceased and Satyaprosad Dey- husband of the accused, with direction to appear before this court in person positively on 29.5.12 and to show cause in writing without taking any alibi of adjournment as to why the defacto complainant shall not be prosecution for the offence u/s 182 I.P.C. and the defacto complainant- Smt. Monimala Dey, Shyamal Das and Satyaprosad Dey shall not be prosecution for the offence u/s 181 read with Section 120B I.P.C.

For ensuring compliance of this order let the copies of the order and its annexures shall be served through I.C. Kotwali P.S. also with direction upon the I.C. Kotwali P.S. so that the persons, named above, shall be produced before this court (though for the present not under arrest) so that the next follow up legal steps can be expedited as against them.

To date.”

31. The order in Misc Case No. 34/2012 passed by the Learned Chief Judicial Magistrate reflected as follows:-

“01

31.5.2012

Received the order from Ld. District Judge, Paschim Medinipur to initiate the proceedings against the accused persons namely i) Monimala Dey, ii) Shyamal Das and iii) Satyaprosad Dey for the offence punishable u/S 181/182 read with Sec 120(B) I.P.C.

The relevant portion of the order is:

In compliance to the earlier order no. 29 dated 29.05.12 all the three delinquent petitioners namely, Monimala Dey, Shyamal Das and Satyaprasad Dey are present along with their ld. Advocate Mr. Dasarathi Nanda.

The appearance of the above named petitioners have have been compelled in view of the findings and observations of this court during the course of recording judgment of acquittal against the female accused Smt. Dipali Dey and eventually three petitioners have entered their first appearance on 29.05.12 and on their prayer the opportunity to furnish show cause has been given and accordingly all the three petitioners have submitted written show cause under their respective signatures.....

So, let a copy of such order along with copies of judgment of S.T. Case No. IV/November, 2010, formal FIR, written complaint and medical papers i.e., Ext.3, Ext. 4 (Post mortem report) Ext. 5, Ext. 6, Ext. 8 and Ext. 8/1 coupled with charge sheet of the concerned G.R. Case, charge head and the evidence of PW-1 Monimala Dey, PW-2 Shyamal Das and PW-5 Satya Prasad Dey be sent to the ld. Chief Judicial Magistrate, Paschim Medinipur for taking cognizance of the offence u/Sec. 182 and Sec. 181 read with Sectoin 120B of IPC against the aforesaid

delinquent petitioners by treating such copy of order sheet as the complaint of the court.”

32. The prosecution failed to prove the ingredients to constitute an offence under Section 306 of the Indian Penal Code. The allegations of humiliation accorded by the related witnesses referred to normal wear and tear in domestic life in a joint family if at all existed. Different people with difference of opinion, mindset and psychology can normally confront each other on trivial issues which should not be ramified or intensified to an extent disproportionately or dispassionately. The related witnesses for reasons best known to them have connived and conspired to turn an event of accidental death into an abetment to commit suicide which could not be sustained on the grounds of variations and contradictions in the evidence of the related witnesses and also the omissions as per the evidence of the Investigating Officer i.e. PW-10 which revealed that PW-2, PW-3 and PW-6 did not state the facts before him which was for the first time mentioned before the Court. Moreover, the delay in filing the complaint can be attributed to fabrication and false implication.
33. The Learned Trial Judge vide the orders as delineated above recorded the instances which formed the basis of his observation and opinion to consider the evidence adduced by the prosecution witnesses as stated therein to be false and the testimony of the same before the Court with the production of documents to be dealt accordingly under Section 340 of the Code of Criminal Procedure to be against administration of justice. The Learned Trial Judge filed a complaint accordingly through a reasoned order with directions to be followed by the Learned Magistrate as well as the police authorities as aforesaid.

34. The Learned Trial Court did not commit any error in appreciating the evidence of the prosecution witnesses and observing that a false complaint was lodged against the opposite party to inculcate her with ulterior motive. The process followed by the Learned Trial Court in accordance with the provisions of Section 340 is not accordingly interfered with.
35. In view of the above discussions, both the criminal appeals being CRA 392 of 2012 and CRA 631 of 2013 are dismissed.
36. There is no order as to costs.
37. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
38. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)