

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

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.A. 701 of 2019

***Shuvojit Bhaduri alias Ishan
versus
The State of West Bengal***

For the Appellant : Mr. Subir Ganguly,
Mr. Pranab Palit,
Mr. Sumanta Ganguly.

For the State : Mr. Ranabir Roy Chowdhury,
Mr. Sandip Chakraborty.

Heard On : 29.07.2024 & 07.08.2024.

Judgement On : 07-08-2024.

Tirthankar Ghosh, J. :

The present appeal has been preferred against the judgment and order of conviction dated 15.11.2019 and 20.11.2019 passed by the learned Additional Sessions Judge, Fast Track Court-II, Howrah in Sessions Trial No. 55 of 2014, wherein the learned Trial Court was pleased to convict the appellant under Section 306 of the Indian Penal Code and sentenced him to suffer Rigorous Imprisonment for seven (7) years and to pay fine of Rs. 10,000/- in default further Simple Imprisonment for six (6) months.

Malipanchghora Police Station case 137/13 dated 17.03.2013 under Section 306 of the Indian Penal Code was initiated against the appellant Shuvojit Bhaduri @ Ishan. On the basis of an information, addressed to the Inspector in-charge, Malipanchghara Police Station, Howrah by Soumitra Paul the case was registered for investigation. The allegations were to the effect that the informant's daughter Late Sayantani Paul had a relation with Shuvojit Bhaduri @ Ishan of Deoghar, Jharkhand for about two (2) years. During the period of existing relationship the boy mentally pressurized his daughter and always tried to squeeze money from her. The informant and his wife understood the motive of the accused but considering the happiness of their daughter accepted the same and never objected to such acts. In fact, at the time of tonsil operation of the said accused the informant had to spend Rs. 50,000/- and on different occasion, he would demand some money or in the alternative threatened to snap the relationship with his daughter. He also took a sum of Rs. 75,000/- for purchasing Motor Cycle from the informant's wife who was forced to pay the money. On 11.03.2013 the informant's daughter had quarrel over telephone with the accused, consequently their daughter did not eat anything and the informant apprehends that the accused must have pressurized her daughter to transfer all the property in his name. On the morning of 12.03.2013 they found their daughter committed suicide by hanging herself and it was transparent to the informant that she was forced to commit suicide by the accused and the same would reveal from the deceased's mobile

phone. The informant therefore, requested the Police authority to take action against the accused.

On the basis of the aforesaid information as earlier stated Malipanchghara Police Station case No. 137/13 dated 17.03.2013 was registered for investigation under Section 306 of the IPC against the accused/appellant and the case was endorsed to Sub-Inspector, Samar Kumar Dey (P.W.9) of the said Police Station. The investigating officer in course of investigation visited the place of occurrence, particularly the bedroom on 17.03.2013, prepared rough sketch map with index, and recorded the statement of the witnesses arrested the accused and effected seizures in respect of the relevant materials. On conclusion of investigation he submitted charge-sheet against the FIR named accused person under Section 306 of IPC.

The case was thereafter committed to the Court of Sessions and the proceedings including the case records were transmitted to the Learned Additional Sessions Judge, Fast Track Court-II, Howrah. The learned Trial Court on perusal of the materials available/collected by the investigating agency by its order dated 03.07.2014 was pleased to frame charges under Section 306 of the Indian Penal Code, against the accused/appellant. The contents of the charge was read over to the accused person to which he pleaded not guilty and claimed to be tried.

The prosecution in order to prove its case relied upon 9 witnesses, which included P.W.1, complainant, father of the deceased; P.W.2, Aparajita Paul

mother of the deceased; P.W.-3, Mita Dutta, Doctor who initially checked the patient and suggested for post-mortem examination; P.W.4, Soumita Mukherjee, colleague of P.W.2 and family friend; P.W.-5, Tanup Pakhira, Sub-Inspector of Belur Police Station who conducted inquest; P.W.-6 Gita Rani Ghosh mother of P.W.-2 and grandmother of the deceased; P.W.-7 Kajal Das, Cook of the complainant's family; P.W.-8, Dr. Joydipta Chattopadhyay, Post Mortem Doctor and P.W.-9, Samar Kumar Dey, Investigating Officer of the case.

PW.1 being father of the deceased deposed that his daughter was on fasting due to '*Sibaratri Puja*'. He met with his daughter lastly on 12.03.2013 at about 11.30 pm and he found her to be totally exhausted. At the relevant point of time she was a student of B. Tech of M.V.J. Engineering College, White Field, Bangalore. She returned to her residence for about six months as she was non-collegiate and did not get any chance for appearing in the examination. This came to the knowledge of the family members in 2012 and as such when he went for verification at Bangalore, he came to know that his daughter did not attend her classes regularly. On enquiry, it came to his knowledge that the accused Shuvojit Bhaduri and his daughter both were staying as paying guest at a place known as '*Prasanti*' at Bangalore.

On further examination-in-chief, the witness stated that since 2012 the accused/appellant started to visit Bangalore frequently and his daughter used to talk over phone at night for which hostel authority did not allow her daughter to stay in the hostel. In September, 2012, the accused/appellant took

Rs.28,000/- from them for his education at IGNOU, however, after receipt of such amount, he started staying at Bangalore permanently with his daughter. In October, 2012, the accused/appellant Shuvojit Bhaduri became sick and his daughter informed about his illness. The parents of Shuvojit Bhaduri did not visit Bangalore and, finally, the mother of deceased had to bear all the expenses of Shuvojit for his treatment. On reaching Bangalore, the witness/P.W.2 found that the deceased was under complete influence of the appellant/accused and was often tortured by him.

When the parents insisted the daughter to return back to Kolkata, the accused influenced her to go to Madhupur to stay with him. The issue was informed to the parents and uncle of the appellant. Thereafter a meeting was held to settle the matter and decide for arranging marriage between Shuvojit and the deceased. Subsequently Shuvojit started residing at Howrah and often visited their house. In February 2012, a sum of Rs.75000/- was taken by the appellant for purchasing motorcycle. Subsequently he came to know that his deceased daughter got married with Shuvojit. The witness alleged that the death of his daughter was abetted by the appellant as she was forced to commit suicide pursuant to mental torture inflicted by the appellant.

PW-2, Aparajita Paul, is the mother of the deceased. She narrated the incident in the same manner as PW-1 with additional information relating to her academic qualification and details relating to how the payment was made to the appellant for his education as well as for purchasing the motorcycle.

PW-3, Dr. Mita Dutta, is a Medical Officer associated with T.I. Jaiswal Hospital. According to her, the deceased was brought by her father and she informed Bally Police Station for bringing a dead patient and suggested for *post mortem* examination.

PW-4, Somita Mukherjee, is a colleague of PW-2 who narrated the incident as she heard from PW-2 regarding the relationship of the deceased with the appellant.

PW-5, Tanup Pakhira, is SI of Police who investigated the UD Case No. 1/2013 dated 12.03.2013 and conducted inquest over the dead body of the deceased Sayantani Pal in presence of witnesses. The inquest report is marked as Exhibit-I.

PW-6, Gita Rani Ghosh, is the grandmother of the deceased who narrated the incident in the same spirit as PW-1 and PW-2.

PW-7, Kajal Das, is the cook of family of the deceased. He narrated the incident as he had seen in the morning on 12.03.2013.

PW-8, Dr. Joydipto Chattopadhyay, is the *post mortem* doctor who opined that the death was effect of hanging as has been noted in the *post mortem* report.

PW-9, Samar Kumar Dey, is the Investigating Officer of the case. The Investigating Officer has given detail regarding chronology of events in carrying out the investigation, starting from the case being entrusted to him which

included the formal FIR, the preparation of the rough sketch map with index, the seizure list which was prepared and signed by him and the mobile phone which was seized in course of investigation being marked as Mat. Ext. I. In his cross examination, the witness admitted regarding the treatment of the victim at 'Nirikshan Kendra'. The documents relating to the same were marked as Exhibit 'A'. There were contradictions which were answered in cross examination by the Investigating Officer of the case which will be dealt with in the latter part of the judgement.

Mr. Subir Ganguly, learned advocate appearing on behalf of the appellant drew the attention of the court in respect of the improvements made by the witnesses while deposing in Court, particularly certain facts which were narrated for the first time by the witnesses in court and pointed out that the FIR was registered after five days of the incident and there was no complaint by the family members when the inquest was held.

According to the learned advocate the Investigating Officer did not find any material to the effect that there were any torture inflicted upon the deceased at the instance of the appellant which would attract the provisions of Section 107 of the Indian Penal Code.

Additionally the medical documents being Exhibit 'A' which was tendered by the defence to the Investigating Officer of the case would reflect that the deceased was suffering from mental challenges and she was under treatment in a particular institute in the year 2009.

Drawing the attention of the court to the list of documents relied upon by the prosecution it was submitted that the call detail records (CDR) were not even admitted in evidence by the learned trial court, however the Investigating Officer in his oral deposition tried to establish the relationship on the foundation of such call detail records (CDR) which were not obtained by adhering to the provisions of law.

The appellant also questioned regarding any material supporting the ownership of the mobile phone which was seized and marked as Mat Ext -I.

The emphasis was laid on the factum that the learned trial court unnecessarily attached importance to the embellished version of P.W.2- the mother of the deceased and P.W.7 – the cook, who was attached to the family of the deceased and arrived at the finding of guilt.

In order to fortify his argument on different issues, learned advocate for the appellant, has relied upon the following judgments:

S.S. Chheena –v- Vijay Kumar Mahajan ,(2010) 12 SCC 190; State of W.B. –v.- Orilal Jaiswal, (1994) 1 SCC 73; Amalendu Pal –v- State of W.B. (2010) 1 SCC 707; State of W.B. –v- Indrajit Kundu, (2019) 10 SCC 188; Madan Mohan Singh –v- State of Gujarat (2010) 8 SCC 628 and Bechuram Bag –v- State of WB, (2023) SCC OnLine Cal 419.

Mr. Ranabir Roy Chowdhury, learned advocate for the State, has opposed the contentions advanced on behalf of the appellant and submitted that the

existence of the relationship between the appellant Shuvojit Bhaduri and the deceased Sayantani Paul is established as the same has been deposed consistently by majority of the witnesses. It has also been consistently stated by the witnesses that both of them were living together at Bangalore and mental torture was also inflicted upon the deceased at the instance of the appellant.

To that extent, learned advocate drew the attention of the court to the evidence of the P.W.2 – the mother of the deceased, who deposed that at the time when Shuvojit/the appellant fell ill, he was treated at Manipal Hospital and none of the relations of Shuvojit/appellant had been to the Bangalore and it was P.W.2 who had been to Bangalore to bear the expenses. However, the behavior of the appellant was such that he did not want her/P.W.2 to stay at his residence at Bangalore, and, as such, she/P.W.2 had to stay at a nearby Hotel.

Additionally, it has been stated that the parents being the P.W.1 and P.W.2 became so disturbed not only because of the relationship but also of the mental pressure being inflicted by the accused/appellant upon the victim, who was abusive and asked her to take rebirth for marrying him. Such abusive words created mental trauma which was in addition to the ploy of extracting money of Rs.28,000/- for completing the course at IGNOU and also the sum of Rs. 75,000/- for purchasing a motor cycle.

Thus, according to the State, there are overwhelming materials, which would reflect that there were continuous mental pressure created upon the

deceased and in close proximity of time of her committing suicide there are evidences to show that there were communications between the deceased and the appellant.

Thus, on behalf of the State, it has been submitted that the order of conviction and sentence do not call for any interference, as such, the appeal may be dismissed.

I have considered the submissions advanced by the learned advocates appearing for the appellant and the State and on appreciation of the oral and documentary evidence available before this Court, I am of the view that there are certain issues which require detail consideration. The first of such issue relates to the document being Exhibit-I which is the inquest report. The said document is admitted in evidence and marked as exhibit through PW-5, Tanup Pakhira who conducted the inquest. Serial No.8 which refers to 'opinion of witnesses as to cause of death' reads as follows :

"The died girl suicide on hanging due to loneliness and mental depression for out side from home due to study as per statement of the died girl's father, elder father and other members of family."

So at the time of inquest, the representation which was made before the Investigating Officer by PW-1 is that the deceased committed suicide due to loneliness and mental depression for studying at a different place.

The parents being PW-1 and PW-2 also suppressed the mental health condition during the investigation as well as in court and improved their

version in order to satisfy the requirements of ingredients for establishing the offence against the appellant. The Investigating Officer of the case knowing fully well that the deceased was suffering from mental challenges did not try to investigate on the issue relating to any motive/intention or mental stability of the deceased believed the cause of death and in a routine manner submitted the charge-sheet.

Exhibit-A which has been admitted in evidence during the course of cross-examination of the Investigating Officer of the case relates to a document of Nirikshan Kendra, wherein the doctor opined regarding the behaviour of the deceased at the time of admission on 18.12.2009 in the said institute, which reflects that – “1. Aggressive and sometimes getting violent; 2. Does not want to stay with parents and 3. Very suspicious about any food and liquid”. In the discharge certificate which is a part of the said series of documents, it has been recorded by the doctor relating to complaints with regard to the deceased as follows : “1. Stealing Money (16000/-); 2. Restless; 3. Agitation; 4. Abusive Language; 5. Suicidal threat; 6. Violent Outburst; 7. Sleep and 8. Escaped from home for 3 days.”

In fact, there is an element of corroboration in the treatment sheets of Exhibit-A and the opinion of the witnesses as cited in the inquest report being Exhibit-I.

The Investigating Officer admitted that during investigation he found the victim was under treatment at ‘Nirikshan Kendra’ under Dr. Abhoy Paul, in

spite of the same, the Investigating Officer did not rely upon such documents or conducted any investigation with regard to the said findings or even did not examine the doctor who treated the deceased. Rather the Investigating Officer led much stress over the scripted statements of the parents who in order to satisfy their grudge against the appellant implicated him in the present case. In fact there were embellishments in the statement of PW-2 and PW-7 which will be worth quoting. The relevant portions of the statements of PW-2 and PW-7 are as follows:-

“PW-2 did not state to me that the accused used to threaten her husband and created pressure upon him so that they could not stay in the flat. PW-2 did not state to me that the uncle of the accused was intimated with all the facts. PW-2 did not state to me that Subhojit created constant pressure to send the victim to Modhupur. PW-2 did not state to me that accused received employment at Shyambazar and created pressure day by day over telephone. PW-2 did not state to me that the victim told them to settle the dispute with the accused. PW-2 did not state to me that after the victim returned to Howrah the dispute continued. PW-2 did not state to me that the accused never wanted that the relationship between the victim and her mother be cordial. PW-2 did not state to me specifically that in the month of January, 2013 she bought a ‘scooty’ for the accused. PW-2 did not state to me that there was dissatisfaction over transferring of property in the name of the accused. PW-2 did not state to me that tears broke into the eyes of the victim but the accused could not be contacted as the phone was switched off. PW-2 did not state to me that repeatedly my daughter used to tell us to have her rebirth to settle the dispute. PW-2 did not state to me that her husband and she tried to mitigate the situation but she refused to accept food and she was deeply hurt

by such provocation and in the late night she committed suicide by hanging herself. PW-2 did not state to me that on 11-03-2013 the victim had no chance to meet Subhojit and in the late night she talked to him over phone. Apart from PW-7, no other witness stated that PW-7 was a cook in the house of the victim. PW-7 did not state to me that in the afternoon of 12.3.13 there was an altercation between the victim and Ishan involving money matter and for getting 'prasad'."

Having considered the aforesaid material discrepancies available, the embellishments and non-consideration of the medical reports, I am of the view that on the evidence available before this court it would not be safe to arrive at a finding that the appellant was solely responsible for the deceased committing suicide.

Accordingly, the order of conviction and sentence passed by the learned Additional Sessions Judge, FTC-II, Howrah in connection with Sessions Trial No. 55 of 2015 arising out of the Malipanchghora P.S. Case No. 137 of 2013 dated 17-03-2013 is hereby set aside. The appellant is acquitted of the charges.

As the appellant is on bail, he may be discharged from the bail bonds.

With the aforesaid observations, CRA 701 of 2019 is **allowed**.

Pending application, if any, is consequently disposed of.

Department is directed to send back the lower court records along with a copy of this judgment immediately to the learned trial court.

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

Urgent Photostat certified copy of this judgement, if applied for, be given to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)