

IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRA 696 OF 2012

PABITRA ROY & ORS.

VS

THE STATE OF WEST BENGAL

For the petitioner : Mr. Neguive Ahmed, Adv.
Ms. Priyanka Chowdhury, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.
Ms. Manisha Sharma, Adv.
Mr. Nirupam Dhali, Adv.

Last heard on : 27.11.2025

Judgement on : 03.02.2026

Uploaded on : 03.02.2026

CHAITALI CHATTERJEE DAS:-

1. Challenging the judgement and order dated October 10, 2012 passed by the Learned Additional Sessions, Judge, 4th Court, Noida in S.T no. XV(6) of 2011, under Section 306/34 of Indian Penal Code against the appellants and sentencing them to suffer imprisonment for seven years and to pay a fine of ₹1000, in default to suffer for record imprisonment for one year this appeal has been filed.

Brief resume of the case

2. A complaint was lodged by the de-facto complainant before the Officer-in-Charge, Nakashipada Police Station on February 18, 2012 alleging that on April 17, 2010 at about 10 P.M. at night when they were sleeping, Ramu Majumdar called his son who was then sleeping and took him on the road. His wife followed them, and they talked in between about two minutes, and then his son returned and went to bed. At 1:30 A.M. at night, the other accused persons named in the FIR came to their house and started abusing them in filthy languages and asked Narayan to come out with a threatening to kill him if disobeyed such direction. It was their grievance that the son of the de-facto complainant had stolen four mobile sets and an amount of ₹12,000 by breaking the window and they began to create pressure for that money upon the de facto complainant. They entered into their house forcibly and took away his son from the house. His son somehow rescued himself and began to run when the accused persons chased him saying 'thief thief'. After that, Ajit Mondal and Apoorva Mandal forcibly snatched ₹4900 from the de-facto complainant. Since thereafter, his son did not return, and he began to search for his son. At about 5 AM, he found his son hanging from a tree. He took his son to Bethuadahari Hospital with the help of village people where the doctor declared his son as dead. It was alleged by the de-facto complainant that the FIR named accused persons/the present appellants killed his son and then they hanged his son from the tree. Over the said incident Nakashipara P.S case no. 185/10 dated 18.4.10 under Section 302/34 I.P.C started.

3. Completion of investigation, the I.O submitted the charge sheet against the present appellants under Section 302 / 34 of the Indian Penal Code. The charge being exclusively triable by the Sessions Court, the matter was committed and then transferred before the Court of Additional Sessions, Judge, 4th Court, Nadia for trial. The learned court on considering the materials framed the charge against all the Appellants under Section 306/34 of the Indian penal code, which was read over and explained to the accused persons to which they pleaded, not guilty and claimed to be tried. The prosecution in this case adduced evidence of 9 witnesses and also proved the documentary evidence and after assessing the evidence adduced by the witnesses and considering the submissions of the learned prosecution and the defence Counsel the Learned Court passed the order of conviction. Hence, this appeal.

Submissions

4. The Learned Advocate appearing on behalf of the appellants submits that accused Amol Mondal died during pendency of the proceeding and the total number of accused as of now are 10. It is the contention of the learned advocate that the victim was a mentally challenged person and there were allegations against him of stealing mobile phones and for that reason the parents were also had to face humiliation. The complaint itself disclosed that on the date of incident, a number of persons came to their house, were furious against the deceased victim because of his persistent stealing habits. They also demanded to return of their mobile phones and pressurised the parents to return the money. The father had to pay some amount to those persons and

thereafter there must have been certain heated alterations between the victim and the parents, and also his elder brother who was also present in the house, as a result, the victim committed suicide. It is further argued that from the evidence it can be gathered that in this case, no person of adjacent houses were cited as witness. No case was lodged over the issue of harassment to the victim by the appellants to the incident. No intimation was also given to any authority.

5. It is further assailed that prosecution has not been able to establish that whether the victim returned to the house or what prevented him from returning to the house and also after such an horrific incident how the parents and brother when did not find him went to sleep. It is further argued that the Surathal report/inquest was conducted in the hospital, not in the police station and in presence of the father who put his signature. PW3 deposed that he found the body lying in the courtyard, but no evidence has come as to who first brought down the body from the tree, and the most importantly, no literature was found or seized by the I.O. There are glaring inconsistencies available in the evidence of the mother and the de-facto complainant. The complaint was lodged at 10:30 P.M. on 18th April when the incident of forcible entry and taking the son for the second time took place at 1:30 A.M. on 17th April. There is perfunctory investigation since the persons having adjacent houses were not examined. The P.O was never identified. No mens rea can be found to attract section 306 of the Indian Penal Code and also no ingredient of Section 107 of the Indian Penal Code was established.

The learned Advocate relied upon the decision of ***Gangula Mohan Reddy versus State of Andhra Pradesh in Criminal Appeal number¹, Kali Ram versus State of Himachal Pradesh², M. Mohan versus the State³ represented by the Deputy Superintendent of Police.***

6. The learned prosecution on the other hand raised strong objection and argued that pursuant to the inquest report it was a case of suicide and it was duly signed by the father/ de-facto -complainant . P.W.2 specifically took the name of Appellant n. 2 and 10 who threatened and his evidence was not impeached. There was no delay in lodging the F.I.R. All the accused abetted and conspired which compel the victim to commit suicide. The Section 306 of the Indian Penal Code applies to all and hence this Appeal should be dismissed.

Analysis

7. Heard the submissions. On careful perusal of the materials and record, and considering the submissions advanced before this Court, the seminal issue falls for consideration that whether the prosecution was able to prove the case beyond the shadow of all reasonable doubt, and whether the judgement and order of conviction is liable to be set aside. The complaint, prime facie alleged against the appellants intended to kill his son since they all came to their house on the night of April 17, 2010 and took their son out forcibly when his wife followed the son. After that, their son returned home and slept. After that again in the midnight at 1:30 A.M., all the accused persons came to their house and used filthy languages and threatened his son to come out or will be

¹ (2010) 1SCC 750

² AIR 1973 SC 2773

³ AIR 2011 SC 1238

taken forcibly. The reason for such aggression was that his son stolen four mobile sets and an amount of ₹12,000/- by breaking windows and hence they put pressure on the complainant to repay the amount. After that, they also entered into their house forcefully and took their son away from the house, and then his son rescued himself from their clutches and ran away, and he was chased by those persons, shouting thief, thief. The complainant specifically stated that accused Ajit Mondal and Apoorva Mondal snatched ₹4900/- from the complainant.

- 8.** The testimony of the de-facto complainant discloses they searched for his son but did not have any trace of him and they returned. He further stated that when his wife went half the way around 10 P.M., while following her son she found Ramu, Prakash and her son returning and on asking Ramu told her that they decided it is not correct apprehension and there is nothing to worry, and assure them to go peacefully to the house. After that, their son with his wife returned to the house. The witness deposed about the threatening given to his son while chasing by the appellants that they will kill him since he had stolen money but it was not mentioned in the written complaint. The witness admitted to be present at the time of the inquest with his another son Ganesh Chandra Shinga. He mentioned the names of Kapadu Biswas, Govinda Roy, Nimai Bihari Nitai Barui and also house of Amar Chand Mondal, but none of those persons have been cited as witness by the investigating authority. From his evidence, also, it can be found that local persons of their area levelled allegations against his son over stealing of mobile phones. He compelled to return the money to Santosh Biswas and Niranjana Sarkar because of the allegation that he had stolen mobile phones. On careful scanning of the

testimony the denial of such allegations though found but admitted the factual of payment to the villager and he did not lodge any case over such false allegation. It is the P.W.2 the father who first saw his son hanging from the tree and with him, Ruby Sarkar, Santosh Mondal and Chandan Biswas were present.

9. The body was found at 5 A.M. on the next morning when he found his son hanging from a tree which is about 40 feet away from their house. They removed the body from the tree and took the dead body of his son to the hospital. The witness was not mentally fit and he could not go to the hospital. After that when his dead body was kept at Nakashipara police station and he was informed from Nakashipara Police Station over telephone he went to police station, which was about 9 to 9:30 AM. He along with his second son Ganesh and Debashish Mondal were present at the Police Station at 9:30 A.M. The complaint was written by Jayanta Barui as per his instruction which was about 10:30 P.M. at night. According to him, he was at the P.S. Since morning 9.30 till 10 P.M., when he narrated the incident to the Daga Babu of the police station, who did not write whatever he stated to him. Only after his son's body was checked, an enquiry report was prepared. Darga Babu recorded his statement therein. The mother of the deceased Promila Singha deposed as PW4 and she admitted that an incident occurred between her son and the accused persons on that day. According to her testimony initially Apoorva Mondal and another person at about 9:30 P.M. came to their house, called their son and while they were informed that he is sleeping, they asked her to call her son and when her son woke up, they took him outside the house on the motorcycle to the road. She went after them, and after proceeding, halfway found that her

son is returning home alone. On enquiry from Ramu Majumdar by her. She was informed that he was thinking it is not such incident. There is nothing to worry about it. After that she came back with her son and went to bed. At about 1:30 P.M. on the same night 20/25 persons entered into their house, asked her to call her son from his room. Allegations were levelled against her son of stealing two mobile phones and ₹12,000 and when she enquired from her son, he did not agree to such allegations. After that, those persons entered into her sons room, slapped him and dragged him out from the house. They threatened her son to kill, and nobody will be able to save him. After that, she also went out with her son, but could not find them in the dark night. On the next morning, when she opened the door of our house, she found her son hanging from a Ata tree, a little far away from their house. Two persons of their locality brought down the dead body of her son and was taken inside the house and then taken to the hospital where body was examined by the Doctor Who declared him brought dead. She admitted that she did not tell the police at the time of interrogation that Apoorva came at night on that day and took her son away in a motorbike. She also did not say to the police that she found Ramu Majumdar standing on the road. She could not say whether her son had stolen important documents and ₹5000/- from the house of Nripen Mondel. She could not recollect whether they scolded their son for stealing money and important documents from the house of the accused persons. She denied that they scolded their son for stealing money, and for that reason, he tried to commit suicide. She admitted that she stated to the police that after searching their son for the whole night, they could not trace him out. So the apparent inconsistencies found are the name of the persons who called her son at the

first instance at 9.30 P.M., regarding discovery of the son in the hanging position in the morning and he brought out the body from the tree. The point raised by the learned Advocate of the defence Counsel that it is astonishing that when parents found that their son was dragged from the room/house by a group of 20/25 persons in the middle of night under the threat of being killed when, did not return and not found on searching how they can went to bed without giving any intimation to police, or any other authority or to any person of their locality, by any of the member of the house. On the next morning, when the mother opened the door found the body hanging from the tree but the father claimed to found the body in the morning. Therefore, since after 1:30 A.M. till 5 A.M., the entire family consisted of the parents and other four brothers, did not take any steps to find out their brother, or even if they tried to search and failed, did not inform to any other authorities or even to any neighbour.

10. In order to unfold the truth it is now necessary to scan the other evidence carefully to find out corroboration. P.W. 3 Sushil Biswas who identified the accused persons in the court room could not say as to how Narayan died at about 6 to 6:30 A.M. in the morning and his dead body was lying in the courtyard of the house of the complainant. He could not say why he hanged himself from the tree and died. This witness was not declared hostile and was cross examined on behalf of the accused persons and he could not throw any light about the reason for such suicide. P.W.5 Jayanta Kumar Barui the scribe of the written complaint proved his signature in the complaint and admitted that it was written pursuant to the instruction of the complainant. P.W.6 Shanti Roy heard that the diseased hanged himself from a tree and died. He

did not know anything about the accused persons or the reason why the victim committed suicide. In his cross-examination, also he said to have heard that Narayan previously committed theft of different article from the residence of the locality and also he had stolen mobile phones and his parents scolded him on that day, and he became very upset.

11. The brother of the deceased deposed as P.W.8, Karthik Singha . According to his version on April 17, 2010 at about 9/9:30 P.M. at night, Prokash Mondal and Ramakrishna Mazumdar came to their house and called his brother and they took his brother outside their house and discussed with him for about 2/3 minutes and then went away, and his brother came back home and went to his bed. After that about 1/1:30 A.M. at night, they again came to their house and began to abuse his brother in filthy languages with an allegation that his brother had stolen ₹12, 00 and 4 mobile phones. They asked them to handover their brother to them with a threatening that in default, they would assault them. It was also said that the matter will be settled if they give them ₹5000/-. Then this witness called his brother and when he came out, they tried to catch hold of him, but his brother ran away from that place, and those persons also chased his brother, but could not catch hold of him. They took away Rs.4600/- from his father and left the place. They searched for his brother during that night for about one hour, but could not trace him out. Thereafter at dawn, they found his brother hanging from a tree situated near their house. They brought him down from the tree and took his dead body to their house. Then they took the dead body to hospital where doctor declared him as brought dead. This witness at the relevant time used to reside in his parents' house. His wife, parents and five brothers were also residing in that

house. This witness could not say anything about previous complaint of theft against his brother since his place of work was in Calcutta and did not reside in their house. He denied the suggestion that his brother was in habit of theft and people made allegation of theft against him or his parents scolded his brother on the relevant date, and then his brother committed suicide. He also admitted that an amount of ₹4600 was taken from his father by the accused persons.

12. No other private witness has been examined in this case. P.W.1 did inquest on the body of the deceased when he was posted at Nakash Para Police Station as S.I. of police. On 13 April 20 2010, he held in quest in connection with Nakashipara P.S, U/D case number 26/10 dated April 18, 2010 and prepared the report. He admitted that witnesses stated to him during holding inquest that deceased was an unsocial men and over and incident. His family members and neighbours scolded him, and for that reason he was suffering from mental weariness and on April 18, 2010 at night, he committed suicide by hanging with a rope. One perusal of the inquest report, it is seen that no other sign of injury was found from the body. It is mentioned that he died by hanging with a rope, but nothing was seized by the I.O. From the post-mortem report, the time of arrival of the body on 18 .4.10 at 15.55 hours can be seen. The post-mortem report was proved by the autopsy surgeon. Dr Ajit Biswas, P.W.7. On 18 April 2010, he was attached to the Nadia district Hospital as medicolegal medical officer and conducted post-mortem over the dead body of Shankar @ Narayan Singh. On examination, he found no external injury on the dead body. There was a ligature mark on the neck situated high up obliquely around neck non-continuously with a knot mark on left side of occipital region of head. Hyoid

born was intact. Rigor Mortis was present at the time of P.M examination. The cause of death was mentioned as Asphyxia, resulting from ante mortem hanging by the neck, which is suicidal in nature .His cross examination was declined. P.W.9, the I.O. who in course of investigation visited P.O, prepared a sketch map with index. He did not obtain any plot no. or khatian number of the plot of the land of the P.O. and of the surrounding areas. He admitted that for each and every U.D. case, there must be an FIR but he could not recollect whether he consulted GD entry book before starting the investigation. He did not examine Meghlal whose house was shown in the index and sketch map. He did not examine any village Panchayat member. He also admitted that apart from the complainant, there is no note in the case diary as to who identified him the place of occurrence. He did not file FIR of the UD case.

13. Therefore on close scrutiny of the entire facts and circumstances and from the testimonies it is evident that excepting the parents and brother, no other evidence can be found to substantiate the contention of the de-facto complainant that the accused persons went to their house on two different time on the relevant day and took the brother forcibly from their house with a threatening to kill him and or that they killed him and hanged him. It is also not found corroborated that in the morning, the body of the victim was found hanging from a nearby tree by the family members and it was brought down by the father and the family members along with villagers, in absence of any other supportive evidence to that extent. By no stretch of imagination it can be accepted that despite a huge mob gathered in the house in the mid of the night no noise was produced and no local people was present. It creates a serious doubt over the prosecution case in absence of any other member supporting

the prosecution case excepting the fact of suicide .P.W. 3 Sushil Biswas only said that the body was lying in the courtyard and prior to that day there was Charam Molla held at their village. Another witness Shanti Roy heard about the suicide. None of them said the discovery of body hanging from the tree. Rather both the witnesses stated about the habit of the deceased of stealing the mobile phones and over which the deceased was scolded by his parents. It is also unusual that the other brothers or the wife of the witness no. 8 did not cited as witness and also none of them was called by the court to dig out the truth in exercise of the power under Section 311 Cr.P.C.

14. The charge was framed under Section 306/34 of IPC and it was not challenged by the prosecution. The post-mortem report clearly speaks the death was in the nature of suicide. The stand of the defence Counsel as evident from the nature of cross examination, that because of the allegations levelled against the deceased by the local people of stealing mobile phones as well as money, the parents and family members had to be humiliated and also he had to pay ₹4600 for that purpose and they scolded the son for which the he was upset and committed suicide, cannot be ignored. According to the evidence of the brother, the deceased used to share the room with the youngest brother, but such brother was not examined to ascertain whether the deceased return at night and then committed suicide or not. No external injury mark was found from the body of the deceased which prima facie negated the theory of physical assault by a mob of 20/25 persons to him, few hours prior to the discovery of the body. In such backdrop let me examine the law laid down to attract Section 306 of the Indian Penal Code. In the decision of **Gangula Mohan Reddy (Supra)** the order of conviction was set aside by the

Hon'ble Supreme Court and it was observed that 'abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained'.

15. It was held by the Hon'ble Supreme Court in the case of **Kali Ram (Supra)** that the golden thread which runs through the web of administration of Justice in criminal cases, is that if two views are possible on the evidence adduced in the case one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. It is also an accepted rule that in case the court entertain reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. In the case of **M. Mohan versus The State represented by the Deputy Superintendent of Police (supra)** the relevant provision of Section 107 of the code was discussed, which defines abetment of a thing.

‘Section 107-a person abets the doing of a thing who-

First-instigate any person to do that thing; or secondly-engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act, or illegal omission take place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly-intentionally aides by any act or illegal omission, the doing of that thing
Explanation two, which has been inserted along with Section 107 reads as under;

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

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

16. From the fore corners of the entire facts and circumstances, no materials can be found in order to establish that there was instigation as defined under Section 107 of the Indian Penal Code. There are glaring inconsistencies in the evidence of the family members itself. When the father and brother, categorically states that initially Ramu Majumdar and Prakash Mondal came to their house in a motorbike, the mother deposed that initially Apoorva Mondal and another person came to their house. According to the father, second time when the group of persons came to their house, Ajit Sarkar and Apoorva Mondal threatened him that one of his son dies, he will have four sons. The suggestion when put to the mother that Apoorva took her son in a motorbike, she admitted that she did not state such fact to the police. This establishes that she was conscious that it was Apurva who took her son in the motorbike, and after which her son returned home and went to bed. If the version of the family members are to be believed that 20/25 persons assembled in front of the house of the de-facto complainant, and there was

heated altercation, threatening by the accused persons to call the son of the complainant to come out otherwise he would be killed and ultimately he came out, and they forcefully took him out from the house, but not a single person of their locality came out to witness such situation. Even after the incident, when the family members could not find out the victim they never tried to inform anybody, including any neighbour. No neighbour also came to console them or to ask or enquired about the incident when the houses of Meghlal Biswas and Jai pada Sarkar are shown in the sketch map situated near the tree. House of the present de-facto , complainant is not shown in the sketch map on the index but the mother said after opening door she found her son hanging from the tree . The land of Meghlal is seen situated near the place of occurrence or the tree, where from the body of the deceased was alleged to be found hanging. Even after seeing the body hanging from the tree neither of the family members immediately rushed to the local police station. From the evidence it has not come that they even went to the nearby houses. The two persons accompanied as alleged, they have not been cited as a witness. The other brother who were also present are not been cited as witness. No ligature was found or seized by the I.O.

17. Therefore, excepting the verbal evidence of the de-facto complainant and the family members that too with inconsistencies, no other evidence are found to support the case of the prosecution that firstly, the accused persons barged into the house of the de-facto complainant on the relevant day as described on two different times at night or day took away forcibly the son of the de-facto complainant, or because of such reason the victim committed suicide by hanging. On the other hand, another version can be found that since the

victim was in habit of doing something like stealing of mobile, either because of his mental state of affair or habit, the parents or family members were humiliated by the local villagers and the father had to pay an amount of ₹4600 towards that stolen mobile phone and this was the reason for which they scolded their son/brother, and he was seriously upset for which he committed such suicide. The family after it was found that their son has committed suicide put down the body in their courtyard, and then took the body to the hospital where it was declared as brought dead. Though the accused persons in their examination under Section 313 of the Code of Criminal Procedure remain silent, accepting pleading innocent when the intimating materials were put before them that cannot be the only ground for passing an order of conviction against them. The prosecution is to prove the case beyond the shadow of all reasonable doubts. The written complaint as well as the testimony of the witnesses are absolutely silent about the role played by the accused persons, accepting Ramu Majumdar, Apurva mandal and Prakash Mondal .

18. The Trial Court only considered that the written complaint was lodged promptly on April 18, 2010, and there was no improvement made by the witnesses at the stage of evidence and a major incident complaint in the case regarding instigation made by the accused persons, compelling the young boy to commit suicide. He was branded as a thief by the accused persons and therefore accepted the story in the FIR.

Conclusion

- 19.** In view of the threadbare discussions made herein above this Court is not inclined to accept the reasoning assigned by the learned trial court for passing such order of conviction solely on the basis of surmise and conjecture. Lastly, even if for the sake of argument, the version of the prosecution is accepted, it fails to attract the ingredients essential for the offence committed under Section 306 of the Indian Penal Code.
- 20.** Hence, this criminal appeal stands allowed.
- 21.** The judgement and order of conviction passed by the learned trial court is hereby set aside.
- 22.** The appellants be released from their respective bail bonds forthwith.
- 23.** Department is directed to forward a copy of the judgement along with the T.C.R to the concerned court for necessary compliance.
- 24.** Urgent certified copy of this order, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(CHAITALI CHATTERJEE DAS,J.)