

Calcutta High Court
In the Circuit Bench at Jalpaiguri
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Biswaroop Chowdhury

CRA 25 of 2019

Ashok Kumar Kundu
Vs.
The State of West Bengal & Ors.

For the Appellant : Mr. Satarudriya Mukherjee, Advocate
Ms. Tannu Agarwal, Advocate
Mr. Debajit Kundu, Advocate

For the State : Mr. Aditi Shankar Chakraborty, Ld. A.P.P
Mr. Abhijit Sarkar, Advocate

Heard and Judgment on: 25.03.2026

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment of acquittal dated August 9, 2019 passed by the learned Additional Sessions Judge, 1st Court, Jalpaiguri, in Sessions Case No.428 of 2016 corresponding Sessions Trial No.02(06) of 2017.
2. Learned advocate appearing for the appellant submits that, the victim was harassed by the private respondents leading to the commission of suicide by the victim. He submits that, since, the private respondents played an active role with regard to the character assassination of the

wife of the victim and spreading canard as against her character. The victim was compelled to commit suicide due to such activities. According to him, same constitute commission of abetment to commit suicide.

3. Relying upon **2025 INSC 76 (Mahendra Awase vs. The State of Madhya Pradesh)** learned advocate appearing for the appellant submits that, ingredients under Section 306 of the Indian Penal Code, 1860 being satisfied at the trial, the learned Trial Judge erred in acquitting the private respondents.
4. Learned advocate appearing for the appellant draws the attention of the Court to the evidence on record. He submits that, Call Detail Records were tendered in evidence and marked as exhibit at the trial. He submits that, there were phone calls between the victim and the private respondents in which, private respondents made certain allegations. He submits that, materials on record are sufficient to convict the private respondents under the charge of Section 306 of the Indian Penal Code, 1860.
5. Referring to the impugned judgment of acquittal, learned advocate appearing for the appellant submits that, the learned Trial Judge recorded and noted various lacunae in the investigation as also in the prosecution. He submits that, right of the victim to receive a fair trial stood affected by such conduct. He submits that, in the wake of definition of victim, the family members of the deceased come into being. The rights of the de facto complainant being the appellant herein stood affected.

6. Relying upon **2013(4) GLT 333 (Manju Lakra vs. State of Assam)**, learned advocate appearing for the appellant submits that, the appeal Court is entitled to reappreciate the evidence and arrive at an independent finding with regard to the charge as against the private respondent.
7. Relying upon **2024 INSC 320 (Babu Sahebagouda Rudragoudar & Ors. vs. State of Karnataka)**, learned advocate for the appellant submits that, the principles governing the exercise of appeal jurisdiction while dealing with an appeal against an acquittal under Section 378 of the Criminal Procedure Code were summarized. He submits that, in the facts of the present case, given the conduct of the investigation and the prosecution at the trial at least, an order of remand should be passed.
8. State is represented.
9. None appears for the private respondents.
10. We are hearing an appeal directed against the judgment of acquittal. **Babu Sahebagouda Rudragoudar & Ors. (supra)** considers the scope of interference by an Appeal Court for reversing a judgment of acquittal recorded by the trial Court. It is of the following view:-

“39. Thus, it is beyond the pale of doubt that the scope of interference by an appellate Court for reversing the judgment of acquittal recorded by the trial Court in favour of the accused has to be exercised within four corners of the following principles:-

(a) That the judgment of acquittal suffers from patent perversity;

(b) That the same is based on a misreading/omission to consider material evidence on record;

(c) That no two reasonable views are possible and only the view consistent with the guilt of the accused is possible from the evidence available on record.

40. *The appellate Court, in order to interfere with the judgment of acquittal would have to record pertinent findings on the above factors if it is inclined to reverse the judgment of acquittal rendered by the trial Court.”*

11. Accused is presumed to be not guilty unless proven otherwise. Accused stands trial with regard to the charge brought as against him. If such trial results in an acquittal, the presumption of innocence is strengthened by the judgment of acquittal. In order to reverse the judgment of acquittal, an appeal Court needs to arrive at a finding that, the judgment of acquittal was passed on no evidence at all or took into consideration irrelevant materials to pass the judgment of acquittal or that, wrong law was applied by the trial Judge or if, the view taken by the Trial Judge cannot be founded upon the evidence established at the trial.
12. As noted in **Babu Sahebagouda Rudragoudar & Ors. (supra)** if, two reasonable views are possible then the benefit of doubt must be awarded to the accused.
13. The private respondents were charged under Section 306 of the Indian Penal Code, 1860. **Mahendra Awase (supra)** is of the view that, in order to bring a case within purview of Section 306 of the Indian Penal Code, 1860 there must be a case of suicide. In commission of such suicide the person who is said to abet commission of suicide must play an active role

by an act of instigation or by doing certain acts to facilitate the commission of suicide. The act of abetment by the person charged with such offence must be proved and established by the prosecution before he can be convicted under Section 306 of the Indian Penal Code, 1860.

14. The decision of the Guahati High Court rendered in **Manju Lakra (supra)** is not appropriate in the facts and circumstances of the present case since, the issue falling for consideration there was an offence of murder or offence of culpable homicidal not amounting to murder. In the facts of the present case, the private respondents stood charged with abetment to commit suicide.
15. In order to bring home the charge of abetment to commit suicide, prosecution was required to establish that there was some overt action on the part of the private respondents in close proximate to the time of death which led to the commission of the suicide.
16. In the facts and circumstances of the present case, the death occurred on August 18, 2015. None of the private respondents were at the place or at the time of occurrence of the commission of suicide.
17. 12 prosecution witnesses were examined at the trial.
18. P.W.1 is the father of the victim. He stated that, victim committed suicide by consuming poison on August 18, 2015. He claimed that, there was an intimate friendship between the victim and the respondent no.2 since childhood. Respondent no.2 used to visit his apartment with a view to play badminton or carom board and also to attend the Gym. The access of the respondent no.2 to apartment of P.W.1 was disliked by other flat

owners. P.W.1 asked the victim not to allow the respondent no.2 to enter the premises as it would lower the prestige of the P.W.1. However, the victim continued his friendship with respondent no.2 outside the premises. Respondent no.2 came to know of the advice of the P.W.1 and became hostile to the victim. His son, daughter-in-law and others along with the respondent no.2 and his wife went to Vizag for travel. After their return, respondent no.2 used to disturb the victim by making phone calls.

19. P.W.1 stated that, he came to know from the victim that respondent no.2 copied all his intimate photographs between the victim and his wife from the mobile phone of the victim and that, respondent no.2 was threatening to publish the same in the social network. P.W.1 seized mobile of the wife of the victim. Thereafter, victim and his wife and their son went to Thimpu. Victim on his way to Thimpu stayed at a particular hotel and was discovered a mobile in the custody of the wife of the victim. Victim was surprised as to how his wife possessed a mobile phone since it was seized by P.W.1. Victim seized the mobile phone from his wife at the hotel. On their return, the incident was reported by the victim to P.W.1. P.W.1 enquired from the wife of the victim as to how she obtained the mobile. Wife of the victim reported that, mobile and the sim card was handed over to her by the respondent no.2. She also claimed that, she was threatened by the respondent no.2 that if the call of respondent no.2 was not responded, respondent no.2 would cause death to all the family members.

20. P.W.1 stated that, victim returned the mobile phone to respondent no.2 by excluding the sim card. Respondent no.2 threatened the victim that if the sim card was not returned, he would publish the pictures in the social network. P.W.1 handed over the sim card with bill. P.W.1 stated that two suicidal notes were recovered by the youngest son in a box in the lift room. Police seized the said suicidal note from P.W.1. Police also seized a diary. He identified his signature on the seizure list which was marked as Exhibits.2 and 3.
21. P.W.1 stated that, respondent no.2 stopped visiting their house after the mobile phone being returned to him. Respondent no.2 however, used to send threatening SMS in the mobile phone of the victim at night regularly. He tendered the ID of the cell phone of the victim in evidence. He stated that, the victim was depressed.
22. P.W.1 stated that, at his request, his daughter and her husband took the victim to Durgapur. After one day of reaching Durgapur, victim received a phone call in the mobile phone late at night. Victim used to receive phone calls from different numbers. Victim used to be addressed by a nick name and victim was threatened that pictures would be flushed out in the social network.
23. P.W.1 stated that, on the victim returning from Durgapur , he was crying. The victim reported that, he received calls at night. P.W.1 seized the phone from his possession. P.W.1 made a call in the number from which the victim used to receive call. Such call was not received. However, after 2 months, P.W.1 received call from the same number, he made a call.

P.W.1 stated that, he was not ready to accept any further call. P.W.1 stated that, the victim died 4-5 days of the return from Durgapur. P.W.1 identified the respondent no.2 in Court.

24. In cross-examination, P.W.1 stated that, he came to know about the suicide note in the afternoon on August 19, 2015. He denied suggestion his signature was not handwriting of the victim.
25. P.W.2 is the wife of the victim. She stated that, the victim was missing from the house and was detected lying in the lift room. Victim was removed to nursing home. She stated that victim committed suicide.
26. P.W.2 stated that, respondent no.2 was known to her being the intimate friend of the victim. Victim and the respondent no.2 were friends since childhood. There were in visiting terms with each other. She stated that, the two family went to Vizag for travel. On returning home, one day, when she was getting back after dropping her son to the school bus respondent no.2 met her on the way and told her that he was possessing pictures of intimate relation between her and her husband. Respondent no.2 threatened that if she did not get any touch with him, respondent no.2 would publish all pictures in social network. P.W.2 did not respond to such proposal. Respondent no.2 further threatened P.W.2 that respondent no.2 would liquidate the victim and her son in case of her failure in keeping touch with him. P.W.2 was disturbed and disclosed such incident to the victim. The victim seized her mobile phone. Victim informed the incident to P.W.1 and her brother-in-law. Access of respondent no.2 to the house was stopped. Respondent no.2 occasionally

sent messages in the mobile phone of the victim. Victim ignored such messages. Again on another day, when, P.W.2 went to drop her son to the school bus the respondent no.2 met her on the way and handed over one mobile phone by inserting one sim card and threatened her in the same way. On returning home with such mobile phone and out of fear she did not disclose such incident to her matrimonial relation and kept the mobile phone hidden.

27. P.W.2 stated that, she along with victim went to Thimpu and stayed one night at Jaigaon. Victim found the mobile with her and seized the same. She disclosed everything to victim on interrogation. Victim returned the mobile to respondent no.2 excluding the SIM. Respondent no.2 did not stop threatening. Respondent no.2 use to torture the victim mentally. Victim stopped receiving his phone call. Respondent no. 2 started calling in disguise from another phone. Victim fell disturbed mentally. Victim was sent to Durgapur to cure himself from mental depression. Respondent no.2 disturbed the victim by making call even at Durgapur. Victim used to call him. Respondent no.2 used to call by a particular name and told the victim that respondent no.2 will publish the photographs.
28. Respondent no.2 drove the victim to commit suicide. The victim committed suicide after 4/5 days from returning from Durgapur. She identified the respondent no.2 in Court.
29. In cross-examination, respondent no.2 acknowledged that she held talks with the respondent no.2 through mobile given by the respondent no.2.

She however, did not remember how many times she talked to the respondent no.2. Victim came to know that the respondent no.2 gave P.W.2 the mobile phone after 4/5 months. Her son was picked by the school bus about a few meters from the complex gate.

30. Younger brother of the victim deposed as P.W.3. He narrated how he discovered the dead body of the victim. He stated that, respondent no.2 intended to build up an illicit relationship with the wife of the victim i.e. P.W.2. He stated that, victim used to be threatened and thereby mentally tortured by Respondent no. 2. He identified respondent no.2 in Court.
31. Acquaintance of the victim and his family deposed as P.W.4. He stated that he came to know from P.W.1 that, respondent no.2 was attempting to build an illicit relationship with wife of the victim and was putting pressure on the wife of the victim. He stated that he visited the house on August 19, 2015 came to know about the suicidal note recovered by the respondent no.3 from the lift room. He is a seizure list witness. He identified the respondent no.2 in Court.
32. P.W.5, is a common friend of the victim and respondent no.2. He identified the respondent no.2 in Court. He stated that on August 13, 2015, P.W.5 met the respondent no.2 when the respondent no.2 said that respondent no.2 made calls from his mobile to one Sanjay. P.W.5 was requested by respondent no.2 to make a call to Sanjay and to say whether the person picked up the call was actually Sanjay or not. He stated that, after he made such phone call, respondent no.2 took the phone and talked to such Sanjay. He identified his statement recorded

under Section 164 of the Criminal Procedure Code which was tendered in evidence and marked as exhibit.

33. A saloon owner deposed as P.W.6. He stated that, respondent no.2 came to his shop took his mobile phone and talked to someone. He tendered his signature in the seizure list which was marked as exhibit.
34. Younger brother of respondent no.2 deposed as P.W.7. He stated that, the mobile phone of the respondent no.2 was seized by the police. He identified his signature in seizure list.
35. The forensic expert deposed as P.W.8. He stated that, he gave his final report after perusing the Post Mortem Report and Viscera report with regard to the victim. He opined that, death due to effect of Carbolic Acid. He tendered such report which was marked as Exhibit-9. The Post Mortem Report and the Viscera report were also tendered in evidence and marked as Exhibits 10 and 11 respectively.
36. An employee of the mobile service provider deposed as P.W.9. He tendered the call details records supplied under Section 65B of the Evidence Act which was marked as Exhibit-12.
37. Handwriting expert deposed as P.W.10. He tendered his report with regard to the examination of the handwriting on the seized document which was marked as Exhibit -13.
38. The police personnel who performed the inquest on the dead body of the victim deposed as P.W.11. He tendered the inquest report which was marked as exhibit at the trial.

39. The Investigating Officer deposed as P.W.12. He narrated the manner and method of his investigation. He tendered various documents and materials which were marked as exhibits at the trial.
40. On conclusion of evidence of the prosecution, the respondent no.2 was examined under Section 313 of the Criminal Procedure Code where he claimed that he was innocent. He denied making any calls as claimed by the prosecution. He claimed that he never went to Vizag. He stated that, other allegations were false as against him. He claimed that he was falsely implicated and was innocent. He declined to adduce any defence witness.
41. Respondent No. 3 was examined under Section 313 of the Criminal Procedure Code. He also denied any connection with the charges leveled against him.
42. Exhibits 9, 10, and 11 read with the deposition of the forensic experts establish that, death of the victim was due to consumption of carbolic acid. Family members of the victim in their deposition, namely, PW 1, 2 and 3 in unison claimed that the victim committed suicide.
43. As noted above, the respondent Nos. 2 and 3 faced a charge under Section 306/34 of the Indian Penal Code, 1860 by the charge framed on June 7, 2017 at the trial.
44. The dead body was recovered from the lift of the apartment at which the victim with his the family members, P.W. 1, 2 and 3 were residing. Respondent Nos. 2 and 3 are not residents of such complex. None of the

respondent Nos. 2 and 3 were found at the place of occurrence or at the time of occurrence.

45. Evidence led by the prosecution does not place the respondent Nos. 2 or 3 in close proximity of the victim at the time and place of occurrence of the commission of suicide. In fact, the consistent case of the prosecution is that, after the victim returned from Durgapur, the victim was in a state of depression. Victim committed suicide 4/5 days after his return from Durgapur.
46. On the strength of the ratio of **Mahendra Awase (supra)**, we are of the view that, the prosecution was unable to establish the requirement of instigation of respondent Nos. 2 and 3 by their act of omission or by a continued course of conduct which created any circumstances such that the victim was left with no other option but to commit suicide. At the highest, the allegation as against the respondent No. 2 is that, he threatened publication of intimate photographs between the victim and his wife in the social media, over a point of time. However, there were number of breaks between the time when the initial threat was leveled and the ultimate commission of the suicide.
47. Although, the friends of the victim and his family members claimed that the respondent No. 2 wanted to develop an illicit relationship with P.W. 2, the wife of the victim, evidence of the same is not on record.
48. The impugned judgment and order is well-reasoned. It takes a view after evaluating evidence on record. It notes certain lacunae in the investigations. It also notes certain lacunae in the conduct of the

prosecution. However, the learned Judge, after evaluating the entire evidence and materials placed on record, takes a view which is plausible. We are not in a position to arrive at a finding that, the view taken is perverse or is diverted from the materials on record or that, the view taken cannot be sustained by the materials on record.

49. In such circumstances, we find no ground to interfere with the judgment of acquittal. The same is hereby affirmed.
50. CRA 25 of 2019 is accordingly **dismissed**.
51. Let a copy of this judgment and order along with the Trial Court records be sent down to the learned jurisdictional Court at once.

(Debangsu Basak, J.)

52. I agree.

(Biswaroop Chowdhury, J.)