

IN THE COURT OF DISTRICT AND SESSIONS JUDGE AT BARPETA.

**Present :- Sri Vinod Kumar Chandak, M.A., M. Com., LL.B.,AJS,
Sessions Judge,
Barpeta.**

**JUDGMENT IN SSESSION CASE NO. 76 OF 2018
(G.R. Case 4463/2015)
Sorbhog P.S. Case No 193 of 2015**

Committing Magistrate :-

**Sri M. L. Das,
The then Addl. Chief Judicial Magistrate,
Barpeta.**

State of Assam

-versus-

1. Joynal Abedin,
S/O Lt. Samsul Haque,
2. Khodeja Begum,
W/O Lt. Samsul Haque,

Both are resident of Bagariguri Pathar,
P.S. Sorbhog,
District – Barpeta

..... Accused.

APPEARANCES :

For the State : Sri Lalit Ch. Nath, learned P.P., Barpeta,
For the Accused : Sri Dipak Das, learned Advocate, Barpeta.

CHARGE FRAMED UNDER SECTION 306/34 OF THE INDIAN PENAL CODE

Date of Charge : 20.06.2018,
Date of Prosecution evidence : 04.08.2018, 11.12.2018, 08.02.2019,
29.03.2019 & 28.08.2019
Date of Statement of accused : 26.09.2019,
Date of Argument : 15.11.2019, 12.12.2019 & 11.02.2020,
Date of Judgment : 11.02.2020.

J U D G M E N T

1. The prosecution case, in a nut-shell, is that informant's daughter Rajina Khatun was married to accused Joyanal Abedin. Though their conjugal life was spent smoothly for some days after the marriage, but thereafter, the accused persons allegedly started torturing her, both physically and mentally, demanding dowry. About six months prior to filing of this case, accused persons drove the victim out of their house after torturing her and since then, she was staying in his house. In the meantime, before three months of the date of filing of this case, accused Joyanal Abedin married another girl. About 12 days prior to the date of filing of this case, the deceased went to the house of the accused persons, but the accused persons again started torturing her and finally, on 15.07.2015 accused persons committed murder of his daughter by strangulating her neck and hanged her outside their house.

Regarding this, on 15.07.2015, informant Deluwara Sonar, S/O Bilat Sonar of village Bagariguri Pathar, lodged an ejahar before the Officer-in-Charge of Sorbhog Police Station.

In pursuance of the said FIR, the Officer-in-charge, Sorbhog Police Station, registered a case being **Sorbhog P.S. Case No 193 of 2015** u/s 304(B)/34 of the Indian Penal Code.

The Investigating Officer investigated the case and ultimately, on completion of investigation, filed charge sheet in the case against the accused persons under section 306/34 IPC vide charge sheet No.221, dated 21.11.2015.

2. The accused, named above, appeared before the learned committal court corresponding to GR case No.4463/2015. The learned Addl. Chief Judicial Magistrate, Barpeta, Sri M. L. Das, after furnishing the copy to the accused persons, committed the case to this court, the same being exclusively triable by the court of Sessions.

3. On appearance of the accused persons before this court, after

committal, my learned predecessor-in-office framed charges against the accused persons u/s 306/34 IPC, after getting prima facie materials under the said sections of law. The charges were read over and explained to the accused persons, to which, the accused persons pleaded not guilty and claimed to be tried.

4. The prosecution side, in order to bring home the charges, against the accused, examined as many as **10(ten)** number of witnesses including the informant, Medical Officer and the Investigating Officer.

After recording prosecution evidence, the accused persons were examined under section 313 CrPC. Defence of the accused is of total denial and innocence.

The accused persons, during their statement, recorded u/s 313 CrPC, stated that they are innocent and denied their involvement in the death of deceased any way.

5. I have heard argument advanced by Mr. Lalit Ch. Nath, learned Public Prosecutor as well as Dipak Das, learned Defence Counsel for the accused, who are facing trial for commission of offence u/s 306/34 IPC.

The learned Public Prosecutor has submitted that the prosecution side has proved beyond all reasonable doubt, by adducing all the material witnesses, that on the fateful day, informant's daughter deceased Rajina Khatun committed suicide and the accused persons, in furtherance their common intention, abetted its commission by subjecting her to cruelty, both physically and mentally, with required mens-rea.

On the otherhand, the learned defence counsel has submitted that there is no evidence to hold the accused persons guilty for committing the alleged offence and hence the accused persons are entitled to get acquittal, atleast, under the benefit of doubt.

6. Upon the rival submissions and on the facts and circumstances of the case, following point has been sorted out for determination in this case ---

(1) Whether the accused persons, on 15.07.2015 at Bagariguri Patha,

within the jurisdiction of Sorbhog P.S., District Barpeta, Rajina Khatun, wife of accused Joynal Abedin and daughter-in-law of accused Khodeja Begum, committed suicide, and that the accused persons, in furtherance of their common intention, abetted its commission by committing physical and mental harassment to her thereby committed an offence punishable u/s 306/34 of the Indian Penal Code ?

DISCUSSION, DECISIONS AND REASONS THEREOF

7. Now to arrive at a judicious decision, let me scrutinize the evidence of the prosecution witnesses.

Witness **Dr. Partha Pratim Das**, who is the M.O. of this case, deposed as **PW1** that on 16.07.2015 he was working as Demonstrator of Forensic Medicine of F.A.A. Medical College & Hospital Barpeta, Assam. On that day, he performed the Postmortem examination on the body of Rezina Khatun, age 22 years, female, W/O Jainal Abedin, vill- Baguriguri P.S.- Sorbhog, Dist:- Barpeta in connection with Sorbhog P.S. Case No. 193/15 U/S 304(B) IPC.

On examination he found the following-----

I. External Appearance :

- 1. Condition of subject stout emaciated, decomposed, etc.:-** Female dead body, average built wheatish complexion wearing green and red coloured nightie. Eyes closed. Conjunctive congested. Mouth open, tongue protruded and bitten. She was also wearing white bra and orange colored petticoat. Face suffused. Inner surface of lips bruised. Rigor mortis present in lower limbs. Body cold on touch.
- 2. Wounds position, and character :-** As described.
- 3. Bruise position, size and nature :-** As described.
- 4. Mark of ligature on neck dissection etc.:-** An oblique non continuous ligature mark of size 32 cm X 0.5 cm present high up around the neck above the level of thyroid cartilage, non continuity being present below right angle of mandible. The ligature mark is dry, depressed, parchentized size and dark brown in colour. Hyoid bone and cartilages of the neck are intact.

II Cranium and Spinal Canal:-

1. Scalp, Skull, vertebrae :- All healthy.
2. Membrane :- Congested.
3. Brain and spinal cord :- Brain congested. Spinal cord not examined.

3. Thorax :

Walls, ribs and cartilage- All healthy.
Pleurae- congested with petechiae at places.
Larynx and trachere- Mucosa congested.
Right and Left Lung- Both the lungs are congested with sub pleural petechiae at places. On cut section, the cut surface oozes out dark coloured fluid blood.
Pericardium- Congested.
Heart- Congested, contains dark, red fluid blood. Coronaries healthy.
Vessels- healthy.

4. Abdomen :

Walls- Healthy.
Peritoneum- Congested.
Mouth,pharynx,
oesophagus- Mucosa congested.
Stomach and its
contents- Healthy and contains gastiic juices with no
suspicious odour.
Small intestine and
its contents- Healthy and contains partially digestive food.
Large intestine and its contents :- Healthy and contains gases and fecal matter.
Liver- Congested.
Spleen- Healthy..
Kidneys- Both congested.
Bladder- Healthy, empty.
Organs of generation,
extrema and internal- All healthy.

5. Muscles Bones and Joints :

Injury- As described.

Disease or deformity-	Not detected.
Fracture-	Absent.
Dislocation-	Absent.

PW1 was of opinion that death was due to asphyxia as a result of antemortem hanging. Approximate time since death 24 – 36 hours.

PW1 exhibited his report as Ext.1 and his signature thereon as Ext.1(1) and proved the signature of SI Barbhuyan, Professor & Head, Deptt of Forensic Medicine FAA Medical College & FAA Medical College as Ext.1(2), which is know to me.

Defence declined to cross-examine PW1.

Witness **Taleb Mandal [PW-2]** deposed that he knows informant Diluwar Sonar. He also knows the accused persons. About 5 years ago, daughter of the informant namely Razina was married with accused. After 2 years of marriage, one day in the morning Diluwar called him by sending a person. Accordingly, he went to the house of accused and saw Razina hanging in the kitchen. Then, as Gaonburah, he informed police. Police took away the dead body and also seized one plastic tool and one rope. Police also prepared inquest. PW2 exhibited the seizure list and inquest report vide Ext.2 & Ext.3 wherein Ext.2(1) & Ext.3(1) are his signatures.

In his cross examination, PW2 stated that he is the Gaonburha of Bagariguri Pathar Gaon and he is informed if any family dispute occurs in his village. Informant belongs to his Lat and his house is situated at a distance of 2 kms and both of them are well known to each other. He knows that the deceased got married to the accused. The informant never told him about the conjugal life of accused and the deceased. He further stated that he sometimes went to the house of accused and had tea there and notice good relation between the accused and the deceased. Deceased never told him anything against the family of accused. He knows nothing except the fact that deceased died by hanging.

Witness **Jalaluddin Mandal (PW3)** deposed in his evidence that he knows the informant, deceased and accused persons. About 4/5 years ago, at around 10 AM, he came to know that that Razina committed suicide by hanging. Then, on going to the house of accused, he saw that Razina committed suicide by

hanging in the kitchen. Police and Gaonburha came and police took the dead body.

During cross-examination PW3 stated that he does not know anything about the incident.

Witness **Dilowar Sonar (PW4)**, who is the informant of this case, deposed in his evidence that accused Joynal is his son-in-law and accused Khudeja is his 'Biyoni' (mother-in-law of his daughter). About 7½ years ago, his daughter Razina got married with accused Joynal Abedin and they lived happily for about one year. Thereafter, accused Joynal started torturing Razian physically demanding money and chased her to his house. He further stated that during stay of Razina in his house, Joynal married another girl. Razina was chased to his house before 12 days of her death. On the date of incident, in the morning, Joynal entered into quarrel with Razina and after that, he killed her by pressing her neck and hanged her in the kitchen. In the morning, seeing people running to the house of accused, he too went there and saw Razina hanging in the kitchen. He did not see Joynal and Khudeja at home. Then he lodged the ejahar in the thana. PW4 exhibited the ejahar vide Ext.4 and his signature thereon as Ext.4(1). Coming back from thana, he saw that both the accused persons were caught by the public. Police got down the dead body and prepared the inquest. PW4 exhibited the Inquest report vide Ext.3 and his signature as Ext.3(2). He noticed mark in the neck of the dead body. Police took away dead body and accused persons.

During his cross-examination he stated that Sorbhog thana is situated at a distance of 7 kms from his house. Police came to the place of occurrence at about 10/10:30 AM and he lodged the ejahar in the evening. He further stated that deceased led conjugal life with accused for about 4 years and during this 4 years, almost in every month he went to the house of accused. He invited his son-in-law too to his house. They showed good regards to each other. Though their relation was good during this 4 years, but his son-in-law quarreled with his daughter. House of accused is situated at a distance of 2 kms if gone through road and 1 km through field. Though quarrel took place between his son-in-law and daughter during this 4 years, but they did not lodge any case. He further stated that he did not mention in the ejahar the date and amount of money demanded by accused. His son-in-law did not demand money from him. He further stated that he

did not write in the ejahar that Joynal took Razina from his house before 12 days of the incident. Deceased prepared paper through Notary of Barpeta that she gave talaq to Joynal, but he does not know whether the said paper was given to accused or not. Except neck he did not see other parts of the body of deceased. He did not write in the ejahar that in the morning on the date of incident Joynal quarreled with Razina.

He denied that he did not state before police that accused Joynal entered into quarrel with Razina.

He did not see Joynal killing Razina by pressing her neck.

He further denied that Joynal never demanded money from Razina; that Razina died by hanging herself. She further denied that he has given false evidence.

Witness **Ramisha Begum (PW5)**, who is mother of the deceased, deposed in her evidence that her daughter was married by accused Joynal about 7½ years ago. Accused Khudeja is mother of accused Joynal. About one year passed smoothly. Thereafter, Joynal started assaulting Razina demanded dowry, money and both were mingled through Samaj. Joynal drove out Razina to their house by assaulting her. before 12 days of incident Joynal took Razina from their house and killed her on the date of incident. They were not informed. Hearing from other people, they went to the house of accused and saw Razina was hanging in the kitchen. On being informed police came and her husband lodged case in thana.

During her cross-examination PW5 has stated that Razina led conjugal life with Joynal for about 4 years and during this 4 years, they did not file any case against Joynal, mel was held in Samaj. During this 4 years Razina and Joynal used to visit their house together and they too went to the house of accused and they were in good terms. Joynal and Khudeja never demanded money from her husband. She cannot remember whether she had stated before police regarding sitting of Samaj. Police did not examine her regarding this incident.

She denied that she stated before police that Razina went to the house of accused of her own.

She does not know on which date and what amount of money was demanded by Joynal. She cannot memorize specifically about the incident.

Witness **Nurjamal (PW6)** deposed in his evidence that deceased was his niece. Informant Dilowar Sonar is his brother. Both the accused persons are his relatives. One is his son-in-law and the other accused is his mother. Incident took place in the year 2015. Deceased got married with the accused Joynal before 7/8 years from the date of incident. They lived happily for two years after marriage. Dispute arose as accused demanded money from the deceased afterwards. Deceased used to go to her parental house to bring money, but as her parents could not give money, she returned back to her matrimonial home. PW6 stated that his house is situated at a distance of 1½ kms from the house of the deceased. Before three years of the incident, he was informed that the deceased died. He rushed to her matrimonial home, but did not find accused Joynal in his house. He was searched by the villagers and was brought from the house of other person. He was tied and police was informed by the villagers. He found the deceased hanging in the kitchen. Before three months of the incident accused Joynal married another girl. Police came and took the body of deceased as well as the accused with them. The deceased might have died due to instant torture and the second marriage of accused Joynal. His brother has lodged this case.

During his cross examination, PW6 stated that he visited the house of the deceased 3/ 4 times in between the date of incident from her marriage. He had tea and he was given due respect by the deceased during his visit to her house. He did not bring back the deceased form her matrimonial home to her parent's house. He cannot say whether deceased filed any divorce case or any affidavit regarding her divorce before the date of incident. The deceased was staying in the house of the accused for last seven days before the date of incident. He does not know how she went to the house of the accused. She went alone to the house of the accused. He cannot say on which date and on which month accused demanded money from the deceased. He cannot say whether any criminal case was lodged between the parties prior to the date of incident. He cannot say whether the neighbouring people knew the alleged atrocities committed by the accused upon the deceased or demand of dowry amount from her.

He does not remember whether he stated before the police that he rushed to her matrimonial home, but did not find accused Joynal in his house. He

was searched by the villagers and was brought from the house of other person. He was tied and police was informed by the villagers; that deceased might have died due to instant torture and the second marriage of accused Joynal.

He did not notice any injury over the dead body of the deceased. He did not state before the police that the accused persons killed the deceased and might have hanged in the kitchen. His brother lodged the FIR after arrival of the police at the place of incident.

He denied that he has deposed falsely today.

Witness **Sahitan Nessa (PW7)** deposed in her evidence that she knows the deceased, informant and the accused persons of this case. Accused Joynal is the husband of the deceased while the co-accused is the mother of accused Joynal. Incident took place before 3 ½ years. There used to be quarrel between the deceased and her husband i.e. accused Joynal. They used to quarrel at their house off and on. The victim went to her parental house after the quarrel and returned back after some time. In the meantime, the accused married for the second time. The deceased returned after 10/12 days from the house of her parents to the house of the accused. There used to be quarrel between both of them. The accused persons killed her by pressing her neck and hanged her in their kitchen. She went to the house of the accused after hearing quarrel of both the parties. When she and the villagers went to the house of the accused persons, they were not found at their house. Police came and brought down the body of the deceased and took the dead body with them. Accused were brought by the villagers to their house after they fled away from their house. Police got her statement. Deceased used to visit the house of her father as accused tortured her regularly. After living together for some time, they used to quarrel and deceased returned to her parental house. Accused used to take back the deceased from her parental house. Deceased returned to the house of the accused Joynal prior to 10/12 days of the incident.

During her cross-examination PW7 stated that the distance of her house and the house of the accused is around one bigha of land. She did not visit the house of the deceased. Nobody was allowed to visit the house of the deceased. For that reason she also did not visit the house of the deceased. She did not see the incident from her eyes, but she heard hue and cry.

She stated the true facts before the police in her statement u/s 161 CrPC.

She denied that she has deposed falsely today.

Witness **Md. Abdur Rashid Sonar (PW8)** deposed that he knows the informant and accused of this case. He also knew the deceased of the case. Incident took place in the month of July 2015. He was at his house. At around 6 AM he went to nearby market. He heard that daughter of the informant Dilbar namely Rozina Begum died. He rushed there. He saw gathering of many people. People confined accused persons in their house. He then asked the people to remain away from accused persons and went to see the dead body. He found the deceased hanging by a neck in the kitchen of the house of the accused person.

He saw mud in the body of the deceased. There was rain throughout the previous night. Then suspicion grew in his mind. He then went near accused persons as the public wanted to assault them. On his asking the accused persons confessed their guilt and told that they killed the deceased.

He then telephoned police. Police came along with SDC. Before police came informant Dilbar lodged FIR. Police then brought down the dead body.

Police seized the rope and one plastic tool from the house of accused vide seizure list Ext.2. He signed as witness in the seizure list. Ext.2(2) is his signature.

During his cross-examination PW8 stated that his house is at a distance of half KM from the house of the accused persons. Before the incident he did not had visiting terms with the accused persons. There were previous quarrel between the deceased and her family members. He visited their house in the case of their dispute. He signed the Ext.2(1) at police station.

He knows the content of the seizure list. Accused were assaulted and they were frightened to some extent.

He denied that he did not state before police that he saw mud in the body of the deceased; there was rain throughout the previous night ; then suspicion grew in his mind.

He further denied that accused did not confess before his as to their guilt in committing the offence; that he has deposed falsely today.

Witness **Sri Gobinda Deka (PW9)** who is I.O. of the case, deposed that on 15/07/2015 he was working at Sorbhog PS as second officer of the said police station. On that day O/C Sorbhog P.S. namely Safur Ali entrusted him to investigate of the case in connection with FIR lodged by informant Dilbar.

Upon taking charges of the investigation he visited the place of incident, examined the complainant as well as other witnesses of the case, drew the sketch map of the place of the incident. Ext.4 is the sketch map and Ext.4(1) is his signature. He recorded the statement of the witnesses also. He arrested the accused persons on 15/07/2015 and forwarded them to police station.

He also sent the dead body for postmortem examination. Prior to that inquest was held by the circle officer.

He also seized (i) one jute rope of 22 ft and (ii) one plastic tool of about 10 inches height. Ext. 2 is the seizure list. Ext. 2(3) is his signature.

On 05/09/2015 he was transferred from Sorbhog police station. Hence, he handed over the case diary to the O/C Sorbhog.

He recorded the statement of witnesses namely (1) Dilbar Sunar (2) Kasumuddin Mandal (3) Jalaluddin Mandal (4) Manisha Begum (5) Nurul Jamal and (6) Sahitan Nessa.

During cross-examination PW9 stated that he went to the place of incident at 10.30 AM. FIR of the case was lodged at 10.15 AM. Case was registered U/S 304(B) IPC. However, FIR does not contain specifically regarding demand of dowry.

He did not apply for adding section 302 IPC to the Ld. Magistrate. He did not pray to the Hon'ble Court for recording confessional statement of the accused persons.

Witness **Pradip Kr. Choudhury [PW10]**, who is also an I.O. of this case, stated that on 15/09/2015 he was working at Sorbhog PS as second officer of the said police station. On that day O.C. Sorbhog P.S. namely Inspector Safur Ali entrusted him to complete the investigation of the case.

He collected the postmortem report, recorded the statement of

witnesses namely Abdur Rashid Sonar and Atuwar Rahman and also examined Mainul Haque @ Bidyadhar Badsah.

After observing formality he submitted charge-sheet against the accused persons namely Joynal Abedin and Khudeja Begum on 21-11-2015 u/s 306/34 IPC. Ext. 6 is the charge-sheet and Ext. 6 (1) is his signature.

During cross-examination, PW10 stated that he submitted charge-sheet after going through the statement of the witnesses as well as other materials.

8. It is pertinent to mention here that accused persons have been charged u/s 306 IPC, which involves abatement to person to commit suicide.

9. Before deciding the question as to whether accused abated the deceased to commit suicide on the relevant day, it may be noted that Section 306 IPC read as under:

"Abetment of a thing – A person abets the doing of a thing,

who:

First- Instigates 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 takes place in pursuance of that conspiracy, and in order to the doing of that thing;

Thirdly – Intentionally aids, by any act or illegal omission, the doing of that thing.

10. Broadly speaking, 'abetment' as contemplated in Section 107 IPC, falls into three distinct categories, namely, (i) a person can be said to abet the doing of a thing, when such a person instigates the other person to do that thing or (ii) when a person engages with one or more other person(s) in any conspiracy in the doing of that thing or (iii) when any person intentionally aids, by any act or illegal omission, doing of a thing.

11. In short, thus, the offence of 'abetment' is committed, when a person instigates another to do a thing or when he enters into a conspiracy for doing of a thing or when he intentionally aids, by illegal act or omission, the doing of that thing.

12.. The question, now, is as to whether 'intention' is an integral part the offence of 'abetment'. In this regard, it is necessary to point out that when a person enters into a conspiracy to do a thing, he not only knows, but also intends the effect of doing that thing, which he has conspired with one or more persons to do. Similarly, when such a person commits the offence of abetment by aiding, such aiding, in the face of the provision of Section 107 IPC, has to be intentional.

The limited question, therefore, which remains to be ascertained, is this: whether 'abetment' by 'instigation' involves 'intention'?

According to Oxford Dictionary, 'instigation' means 'to goad or urge forward to prove, incite, encourage to do act". Stroud defines 'abet' thus:

"To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, of necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwittingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or no-interference-or he may encourage the latter case, he aids and abets; in the former, he does not. It is no criminal offence to stand by a mere passive spectator of a crime, even of a murder. Non-interference to prevent a crime is not itself a crime. But the fact that a person was voluntarily and purposely present witnessing the commission of a crime and offered no opposition to it, though he might reasonably be expected to prevent it, and it had the power so to do or at least to express his dissent, might, under some circumstances, afford cogent evidence upon which a jury would be justified in the finding that he willfully encouraged and so aided and abetted. But it would be purely a question for the jury whether he did so or not".

13. Black's Dictionary defines 'abet' to assist or facilitate the commission of a crime or to promote its accomplishment.

According to Wharton, 'to abet' means, literally, to bait or excite, as in the case of an animal. In its legal sense, 'to abet' means to encourage, advise or instigate the commission of a crime.

14. In the case of *Ramesh Kumar – versus – State of Chattisgarh*, reported in (2001) 9 SCC 618, the Hon'ble Supreme Court while interpreting the expression 'instigation' as an act of 'abetment', in Section 306 IPC, observed:

“20. Instigation is to goad, urge forward, provoke, incite or encourage to do 'an act'. To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation”. [emphasis added].

15. In the case of *Randhir Singh – versus – State of Punjab*, reported in (2004) 13 SCC 129, too, the Hon'ble Supreme Court, explaining as to what abetment, in the context of an offence under Section 306 IPC, conveys, observed, in **Para No – 12**, thus:

“Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role, which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC”. [emphasis added]

16. In the light of the definition of the word 'abetment' or the meaning of the words 'to abet' and, more particularly, taking into view how the Supreme Court has described abetment, in **Ramesh Kumar [supra]** and **Randhir Singh [supra]**, what becomes clear is that 'abetment' involves a mental process of entering into a 'conspiracy' for doing of a thing or a mental process of 'aiding' a

person in doing a thing or in the mental process of instigating, i.e., 'goading', urging, forwarding, provoking, enticing or inscribing to do a thing'. Thus abetment implies an intentional act or omission on the part of the person, who is alleged to have abetted an act. There need not 'be direct evidence of such intention and such intention may be inferred even from circumstantial evidence.

In the case of ***State of West Bengal – versus – Orilal Jaiswal***, reported in **[1994] 1 SCC 73**, the Hon'ble Apex Court has observed that the Courts should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced, at the trial, for the purpose of finding whether the cruelty meted out to a victim had, in fact, induced her to end her life by committing suicide. If it transpires to the Court that a victim, committing suicide, was hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which the victim belonged, and such petulance, discord and differences were not expected to induce a similarly circumstanced individual, in a given society, to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused, charged of abetting the offences of committing suicide, should be found guilty.

Thus, 'abatement', in the context of an offence under Section 306 IPC, would mean inciting, encouraging, provoking or urging forward to commit suicide. Such an act of inciting, encouraging, provoking or urging would obviously reflect an intentional act, on the part of the accused, to induce one or intentionally drive one to commit suicide. Hence, to commit suicide merely because of the fact that a husband subjects his wife to cruelty and the cruelty is of the extent that it would, ordinarily, drive a woman to commit suicide, such an act of subjecting the wife to cruelty by such a husband would not necessarily amount to abetment unless the Court is satisfied that the wife was subjected to cruelty, or the woman was subjected to cruelty, with 'intent' to drive her to commit suicide.

[Relied on the judgment passed in the case of Bishal Agarwal – versus – State of Assam & another, 2012 [4] GLJ 161 of the Hon'ble Gauhati High Court]

17. In the present case there is no direct evidence showing the intention of accused to drive the deceased to commit suicide but as has been held by Hon'ble

Supreme Court in the case of ***Ramesh Kumar-versus- State of Chattisgarh***, reported in ***(2001) 9 SCC 618*** that there need not be direct evidence of such intention and such intention may be inferred even from circumstantial evidence.

18. To prove the above circumstances, it is necessary to examine and evaluate the evidence of the witnesses carefully. P.W.1 is M.O. who performed autopsy over body of deceased. He deposed that death was due to asphyxia as a result of antemortem hanging.

P.W.2 and P.W.3 did not depose anything against the accused. None of these any witnesses deposed as to why deceased committed suicide. These witnesses, who are from the same village, where, deceased died, deposed that accused and deceased lived happily as husband and wife and they heard nothing regarding any dispute between them.

The father of the victim(PW4) though deposed that accused Joynal started torturing the deceased after year of their marriage and claimed that she was even chased out to his house before 12 days of her death. He also stated that on the date of incident accused Joynal entered into quarrel with deceased and then he killed her by pressing her neck and hanged her in kitchen.

Similarly, the mother of the deceased (PW5) deposed that accused Joynal demanded dowry, but they were mingled through society people. However, the father of the deceased (PW4) contradicted PW5 by deposing that his son-in-law did not demand money from him. He also stated that he did not write in the FIR that accused Joynal took back the deceased from his house before 12 days of the incident.

Moreover, nobody from the society people has been examined by prosecution side to corroborate the evidence the evidence of PW5 that 'mel' was held in the society to resolve the dispute between the deceased and the accused

persons.

It is interesting to note here that PW5 deposed in her cross-examination that they regularly used to visit the house of accused and both sides were in good terms. PW5 also took 'U' turn in her cross-examination by saying that accused persons never demanded any money from her husband. She also deposed that police did not examine her regarding this incident.

Witness Nurjamal(PW6) though claimed that deceased might have died due to instant torture and the second marriage of accused Joynal, but in his cross-examination he stated that he does not remember as to whether he stated before the police that deceased died due to instant torture or second marriage of accused Joynal.

PW7 admitted that she did not visit the house of deceased and did not see the incident from her eyes.

PW8 deposed that accused persons confessed their guilt before him that they have killed the deceased. But the I/O of the case Sri Gobinda Deka (PW9) clearly deposed in his cross-examination that he did not make any prayer to the court for recording confessional statement of the accused persons. Moreover, his evidence has not even been corroborated by the evidence of parents of the deceased i.e. PW4 & PW5.

As said above, in a case u/s 306 IPC, the prosecution requires to prove that accused subjected the deceased to cruelty with intent to drive her to commit suicide.

From the evidence on record it transpires that deceased was

hypersensitive to ordinary petulance, discord and differences in domestic life, quite common to the society to which the victim belonged.

It was argued by learned Public Prosecutor that deceased might have committed suicide as accused married a second girl. But it is admitted that accused is a person belonged to minority community and going for second marriage is quite common in the society. Thus, the conscience of this court is not satisfied for basing and finding that accused can be held guilty for abating the offence of committing suicide by deceased.

19. Learned counsel for the defence Sri Dipak Das argued that there is no evidence on record to establish the nexus between the offence alleged and the accused. It is submitted that evidence on record which was brought by the prosecution does not point out to the guilt of the accused. It is further submitted that from the evidence on record it is apparent that there is no direct or circumstantial evidence against the accused to link him with the commission of the alleged crime. It is also submitted that there is no motive behind the crime and prosecution has miserably failed to prove the motive.

From the facts and circumstances of the case, as said above, I am constrained to hold that the present case is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide in which case an instigation may have been inferred.

20. The Hon'ble Supreme Court in the case of ***Assistant Collector of Central Excise, Calicut-versus- V.P. Sayed Mohammad***, reported in ***AIR 1983 SC 163*** held as follows:

"It is true that the onus of proving that facts essential to the establishment of discharge against an accused lies upon the prosecution and the evidence must be such as to exclude every reasonable doubt

about the guilt of the accused. An accused cannot be convicted of an offence on the basis of conjectures or suspicions. If reasonable doubt arises in the mind of the court after taking into consideration the entire material before it regarding the complicity of the accused the benefit of such doubt should be given to the accused but the reasonable doubt should be a real and substantial one and a well founded actual doubt arising out of the evidence existing after consideration of all the evidence”.

21. Keeping in mind the above rationale as laid down by the Hon'ble Apex Court I am constrained to hold that the evidence adduced by the prosecution in support of its case is nothing shorter than mere conjectures and suspicion. Consequently the charge under Section 306/34 IPC is held to be not proved against the accused Joynal Abedin and Khodeja Begum beyond all reasonable doubt. Accordingly, the accused are found entitled to get benefit of doubt, for which, the accused Joynal Abedin and Khodeja Begum are acquitted on benefit of doubt.

22. In view of the above review of evidence on record, discussion held based on established principles of law and also upon hearing the learned counsel for the parties, I hold that the prosecution miserably failed to prove the charge under Section 306/34 of IPC against the accused Joynal Abedin and Khodeja Begum beyond all reasonable doubt and the accused is liable to be acquitted.

23. In the result, accused **Joynal Abedin & Khodeja Begum** are **acquitted** of the charge under section 306/34 IPC, levelled against them, on benefit of doubt.

Their bail bonds stand discharged.

24 Given under my hand and seal of this court on this the **11th day of February, 2020.**

Typed by me
(Kavery Das, Stenographer)

Sd/-
Sessions Judge, Barpeta.

A P P E N D I X

(A) **Prosecution witnesses:**

P.W.1	= Dr. Parthapratim Das, M.O.,
P.W.2	= Taleb Mandal,
P.W.3	= Jalaluddin Mandal,
P.W.4	= Dilowar Sonar, informant,
P.W.5	= Ramisha Begum,
P.W.6	= Nurjamal,
P.W.7	= Sahitan Nessa,
P.W.8	= Md. Abdur Rashid Sonar,
P.W.9	= Sri Gobinda Deka, I.O.,
P.W.10	= Sri Pradip Kr. Choudhury, I.O.

(B) **Prosecution Exhibits:**

Ext.1	= Postmortem report,
Ext.1(1)	= Signature of PW1/M.O.,
Ext.1(2)	= Signature of S.I. Barbhuyan, Prof. & HOD, FM, FAAMCH, Barpeta,
Ext.2	= Seizure list,
Ext.2(1)	= Signature of Taleb Mandal/PW2,
Ext.2(2)	= Signature of Abdur Rashid Sonar/PW8,
Ext.2(3)	= Signature of Sri Gobinda Deka/PW9,
Ext.3	= Inquest report,
Ext.3(1)	= Signature of Taleb Mandal/PW2
Ext.3(2)	= Signature of Dilowar Sonar/PW4,
Ext.4	= Ejahar,
Ext.4(1)	= Signature of Dilowar Sonar/PW4,
Ext.5	= Sketch Map,
Ext.5(1)	= Signature of Sri Gobinda Deka/PW9,
Ext.6	= Charge-sheet,
Ext.6(1)	= Signature of Sri Pradip Kr. Choudhury/PW10,

(C) **Defence witnesses:** Nil

(D) **Defence Exhibits:** Nil.

(E) **Court witnesses:** Nil

(F) **Court Exhibits:** Nil.

Sd/-

Sessions Judge, Barpeta.