Form No: J(1)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI

CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:-

The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Reetobroto Kumar Mitra

CRA (DB) 2 of 2024

Bipan Pradhan & Anr.

Vs.

The State of West Bengal

For the appellants:	Mr. Nripen Das, Mr. Debanjan Das, Ms. Sukanya Bhowmik.
For the State:	Mr. Jagriti Mishra, ld.AAAG Mr. Tapas Prasad.
Hearing concluded on:	28.09.2026
Judgment pronounced on:	28.09.2026

RAJASEKHAR MANTHA , J. :-

1. The subject appeal is directed against the judgment and order of conviction dated 15th December, 2023 and 16th December, 2023 passed by

the learned Sessions Judge, Kalimpong in Sessions Case No. 03 of 2021 and Sessions Trial No. 04 (03) of 2021 arising out of Jaldhaka Police Station Case No. 15 of 2020 dated 01.07.2020. The appellants were convicted under Section 306 of the IPC to suffer rigorous imprisonment for 8 years and a fine of Rs. 10,000/-.

THE PROSECUTION CASE

2. The prosecution case, in brief, is that the victim Srijana Rai 40 years of age, was a widow living with two daughters at Village- Garibas in Kalimpong District. The daughters, worked in Chennai from time to time and came back during the COVID pandemic. They were initially quarantined in the house of one Swapan Pradhan. After pandemic, they returned to live with their mother.

3. There is some evidence on record to suggest that the appellant no. 1, Bipan Pradhan, may have had an illicit relationship with the victim. The appellant no. 1 was married to the appellant no. 2. The second appellant was obviously unhappy with such relationship. On the fateful night, i.e,. 30th June, 2020 and many times prior thereto, the victim was threatened by appellant no. 2 verbally. The grievance of the appellant no. 2 was the aforesaid illicit relationship between the victim and the appellant no. 1. The victim's character was assassinated in filthy abusive language by the appellant no. 2.

4. The victim is stated to have visited her sister, PW-13. Sangita Thapa, at a neighbouring village at a distance of an hour by vehicle from Garibas. The victim is stated to have narrated the entire incident of abuse by appellant no. 2 and alleged rape by appellant no. 1 on her.

5. The victim is stated to have been depressed, and could not sleep. She washed her hair 3 a.m. in the morning and made tea for herself. She later used a nylon rope, for hanging clothes in the house, for hanging herself from a tree in a nearby chinchona field. Upon being informed, the Jaldhaka Police Station registered a U.D. case and inquest was conducted by ASI Kumar Thapa, PW-11. No injuries were found on the body of the victim except the ligature mark. Postmortem was conducted by PW-8, Dr. Koushik Roy, who deposed that there were no injuries were found on the body or private part of the victim except the ligature mark.
6. Investigation was undertaken by PW-20, Nilam Sanjiv Kujur, Inspector-in-Charge, Jaldhaka Police Station. Charge sheet was filed. Charges were framed against the appellants under Sections 306 and 376 of the IPC.

THE TRIAL:

7. **PW-1**, was the 29 years old daughter of the victim. She deposed that on 30th June, 2020 around 11.30 P.M. to 12 in the night her mother received a phone call from the appellant no. 2. The victim was abused repeatedly by appellant no. 2 and there was a threat of assault. The victim became scared and wrapped herself with an additional clothes in the event the appellants came to actually assault her. The victim could not sleep in the night. She washed her hair at 3 a.m. in the morning and made tea for herself. The victim was admittedly highly depressed. She thereafter recorded a voice message over the phone through whatsapp and sent it to PW-13.
8. Upon PW-1 waking up at 5 in the morning in the next day, she could not find her mother and started searching for her. She found her mother nearby forest hanging from a rope. The neighbours were alerted and the

police arrived at 11 a.m. in the morning. She signed on the inquest report. In course of cross-examination, she deposed that there was no signature or label pasted on the mobile phone seized by the police and produced in Court. Such mobile phone was not exhibited in Court.

9. **PW-2 was one Krishna Kumari Rai, a neighbour of the victim**. She deposed that the phone call of the appellant no. 2 to the victim came between 12 to 12.30 in the afternoon where the appellant no. 2 is stated to have used abusive language and had threatened the victim. The victim's character was assassinated orally. This contradicts the evidence of PW-1 that the phone call of the appellant no. 2 came at 10 p.m. in the night.

10. **PW-3 was Sailesh Rai, a neighbour of the victim**. He gave a third version of the entire incident. He deposed that there was hot altercation between the appellants and the victim between 9.30 and 10 p.m. in the night on 1st July, 2020 (possibly a typographical error actually 30th June, 2020). In course of such altercation, the appellant no. 2 is stated to have abused the victim and threatened to strip her entire family and parade them in the entire village. The victim was called a prostitute and her children were called children of prostitute. The appellants thereafter went back to their house. The children of the victim started crying.

11. PW-3 thereafter changes his evidence to indicate that the appellant no. 2 was threatened over a phone speaker whereof was kept aloud.

12. The PM Doctor in a five lines evidence in chief only indicated that the death of the victim occurred due to the effect of hanging and was ante-mortem in nature.

13. **PW-7 was another daughter of the victim**. She deposed that both the appellants came to their house and abused the victim in filthy language. She for the first time deposed that the appellant no. 1 raped her mother forcibly. She thereafter deposed that her mother/victim left her voice message to her sister PW-13 over the phone that she was committing suicide because of Bipan Pradhan, appellant no. 1.

14. An improvement, however, in this regard appears from the evidence of PW-13, Sangita Thapa. PW-13 was the victim's own sister. Her statement under Section 164 of the Cr. P.C. was recorded. She was admittedly a member of the Child Welfare Committee of Kalimpong. The statement was exhibited. She deposed that the victim told her that the appellant no. 1 committed rape on her and tortured her repeatedly. She however did not disclose that how many times and where was such rape committed. The evidence of PW- 13 is equally vague on the nature of threat and humiliation by PW- 1 & 2. She further deposed in her statement under Section 164 of the Cr PC that the victim told her over the phone she was killing herself due to torture by the PW- 1 and asked PW- 13 to take care of her children.

15. Based on the aforesaid evidence the Trial Judge convicted the appellants under Section 306 of the IPC for abetting the suicide of the victim. The appellant no. 1 was however acquitted of the charge under Section 376 of the IPC and rightly so.

ANALYSIS OF THE COURT

16. This Court notes without any hesitations that the appellant no. 1 and the victim were probably having extra marital affairs. If indeed the appellant no. 1 committed forcibly sexual intercourse on the victim, she

would have complained to her sister and grown up children, if not to the police itself. She did not inform her neighbours or the villagers on any sexual assault by the PW- 1 on the victim.

17. The allegation against the appellants under Section 376 has been rightly rejected by the Trial Court.

18. This Court however notes several contradictions between the evidence of two daughters, PW- 1, 2, 3 and PW- 7 and PW- 13. There is contradiction to the extent that while some of the prosecution witnesses stated that the threats to the victim were given over the telephone, PW- 7 has deposed that the appellants came personally to the house of the victim between 6 and 6:30 PM in the evening and had abused her. PW 1 stated that the appellant No. 2 called her mother in midnight. PW 2 stated that phone call was in the afternoon.

19. PW-1 however stated that abusive language used by the appellants was only over the telephone. The voice samples or recordings of suicide because of the threat and abuse by the appellants have been recorded at least by the victim in a voice message to PW- 13. That was not exhibited or transcribed by the Trial Court.

20. In the light of the above, this Court is unable to accept that the victim was provoked into committing suicide by the appellants. While PW-1 and PW- 7 have admitted that their mother was in depression, PW-13 has denied the same.

21. Since there is no exact clear evidence before the Trial Court or this Court as regards the exact timing of abuse and threats by the appellants and in what form that is physical or over the telephone. The question of establishment of any causal connection between such threat and suicide

cannot arise. The prosecution has miserably failed to establish a case of abetment by the appellants directly having a link and/or causal connection with the suicide by the victim.

22. What is clear of this Court is that the appellant no. 2 was naturally unhappy with the husband's illicit relations with the victim. The victim not having opposed or complained against the appellant no. 1 of alleged forcible sexual intercourse with her, it must be presumed that the relations between the appellant no. 1 and the victim were consensual.

23. In view of the contradictory evidence between PW- 1, PW-2, PW-3, PW-7 and PW- 13 and other witnesses as regards the time and mode and manner of threats an abusive language by the appellant no. 2 to the victim one cannot come to any clear unimpeachable conclusion. That such very threats led to the victim committing suicide.

CONCLUSION

24. In the light of the discussions, this Court is clear and unequivocal view that the conviction of the appellants under Section 306 by the Trial Court was ex facie erroneous and is liable to be set aside and is hereby set aside.

25. The appellants shall be set at free forthwith. The appellants are stated to be on bail. Appellants, who are already in bail, shall be discharged from their bail bonds after expiry of six months in terms of Section 437A of the Code of Criminal Procedure.

26. The appellants, shall be set at liberty, if not wanted in any other case, upon execution of a bond to the satisfaction of the Trial Court which

shall remain in force for a period of six months in terms in terms of Section 437A of the Code of Criminal Procedure.

27. In view of the above, the impugned order sentencing the accused persons shall stand set aside.

28. Accordingly, CRA (DB) 2 of 2024 is allowed and disposed of. Consequently, all connected pending applications, if any, are also disposed of.

29. Lower Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

30. Urgent certified copy of this judgment, if applied for, shall be made available to the parties upon compliance with due formalities.

(Rajasekhar Mantha, J.)

I agree.

(Reetobroto Kumar Mitra, J.)