

IN THE COURT OF THE SESSIONS JUDGE ::::: BONGAIGAON

**Sessions Case No. 45(A)/2008.**

U/S 448/354/306/34 IPC

State

Vs.

1. Golam Mustafa

2. Shajahan Ali

3. Jafar Ali

4. Fulbar Ali

....Accused

***PRESENT : Smt. M. Nandi,  
Sessions Judge,  
Bongaigaon.***

***ADVOCATES APPEARED : Sri A. K. Nath, Public Prosecutor  
for the State.***

***Sri N.K. Ghose, Advocate  
for the accused.***

Date of Argument : 10.12.2014,

21.02.2015.

Date of Judgment : 07.03.2015.

### **JUDGMENT AND ORDER**

1. The prosecution case, in brief, is that the informant Sofior Rahman lodged an ejahar before the I.C. Borghola Outpost under Abhayapuri Police Station stating inter-alia that his sister Samina Khatun, aged about 15 years while going towards her school, the accused namely, Golam Mustafa, Shajahan Ali, Jafar Ali and Fulbar Ali used to restrain her

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way, abused her with filthy languages. They also threatened to kidnap his sister if she did not marry the accused Golam Mustafa. On 16.04.2007 at about 3.30 PM, in absence of any family members in his house, the accused persons came into their house and tried to outrage her modesty. When his sister raised alarm, some neighbouring people came to the spot and the accused persons have left the place. Later on, his sister after taking poison set fire on her body by pouring kerosene oil. At that time his mother came to his house and having seen such incident, raised hue and cry and some neighbouring people came to the spot and with the help of them, his sister was taken to the hospital.

2. On receipt of the ejahar, police registered a case U/S 448/354/511/506/34 IPC. Subsequently after seven days, sister of the victim died and the Investigating Officer prayed to add Section 306 IPC before the learned CJM, Bongaigaon which is accordingly allowed. After completion of investigation charge sheet was submitted against the accused persons U/S 448/354/306/506/34 IPC. As the offence U/S 306 IPC is exclusively triable by the Court of Sessions, hence, the case is committed to this Court. During trial the accused put their appearance before the court and they were enlarged on bail. Charge was framed U/S 448/354/306/34 IPC which was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

3. In this case, prosecution examined 22 witnesses. On the other hand, defence also adduced 4 witnesses in support of their case. The plea of the defence is the plea of denial.

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4.

**Point for determination:**

1. *Whether the accused persons on 16.04.2007 at about 3.30 PM at village Kasari Patty under Abhayapuri P.S. in furtherance of common intention committed house trespass by entering into the house of the informant Sofior Rahman with intent to outrage the modesty of Samina Khatun and thereby committed an offence U/S 448/34 IPC !*
2. *Whether the accused persons on the same day, time and place in furtherance of their common intention used criminal force to Mustt. Samina Khatun with intent to outrage her modesty and thereby committed an offence U/S 354/34 IPC !*
3. *Whether on the same day, time and place Samina Khatun committed suicide to set fire on her body and whether the accused persons in furtherance of their common intention abetted its commission by outraging the modesty of Samina Khatun and thereby committed an offence U/S 306/34 IPC !*

**DECISION AND REASONS THEREOF**

5. To arrive at just decision of the case, let me consider the evidence of the witnesses.

6. PW 1 is the informant Sofior Rahman. He deposed in

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his evidence that about 3 years back when his sister Samina Khatun, aged about 15 years was going towards her school, accused Golam Mustafa, Shajahan Ali, Jafar Ali and Fulbar Ali wrongfully restrained her way, used unparliamentary languages and abused her. Golam Mustafa threatened his sister that if she did not agree to marry him she would be kidnapped. The other three accused also threatened that if she did not marry Golam Mustafa, she will be either burnt to death or poisoned to death. On 16.04.2007 at about 3.30 PM, the accused persons entered into their house, pulled the hand of his sister in an attempt to outrage her modesty. At that time, other members of his family were not present. His mother went to the bank of river and father and brothers went to the field. When his sister raised hue and cry, the accused fled away. Out of shame and frustration, his sister took poison to kill herself and thereafter poured kerosene oil on her body and set fire after going inside the latrine. At that time his mother Sajiran Nessa arrived at home and found his sister with fire on her body and raised hue and cry which attracted neighbours Lal Bhanu, Sukur Ali, Kodiran Khatun, Mojiran Nessa and many others. She was taken to Abhayapuri Hospital wherein she made a dying declaration to the doctor and he was present and his aunt Anowara Khatun and Maleka Khatun were also present at that time. Thereafter she was treated at Goalpara Civil Hospital and thereafter she was brought back home and died after about 10 days. After the incident he lodged the ejahar vide Ext-1.

In his cross-examination, PW 1 replied that accused Shajahan, Sukur Ali, Lal Bhanu and accused Fulbar Ali are their adjacent neighbours. His sister informed him about troubling by the accused while

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going to her school prior to one year of the incident. But they did not file any case. His sister consumed pesticides and the container was found which was seized by police. But he could not say from where she got it. He was not a witness to the consuming of poison by his sister. She sustained burn injury on her body. When he lodged the ejahar, at that time, his sister was alive.

7. PW 2 is Mohibul Hoque @ Islam. He deposed in his evidence that Samina Khatun, sister of the informant Sofior died about three years back. At that time, he was at the paddy field and having seen fire from the distance of about 100 metres, he rushed to the place of occurrence. He had found accused Mustafa, who poured water on Samina to extinguish the fire near to the victim's latrine. The other accused Shajahan, Fulbar and Jafar were also present there. Immediately after him, Hazarat Ali arrived. He could learn from the people that Golam Mustafa wanted to marry Samina.

In his cross-examination, PW 2 replied that he did not know what was the cause for which Samina set fire on her body.

8. PW 3 is Lal Bhanu. She deposed in her evidence that she is the immediate neighbour of the informant. On her arrival, she found Samina with burn injuries and the people around put plantain leaves on her to have the cooling effect and took her to hospital.

In her cross-examination, PW 3 replied that she could not say what was the cause of fire. On her arrival, he did not see any of the accused in the house premises of Sofior.

9. PW 4 is Samsul Hoque, who is the father of the deceased. He deposed in his evidence that on 16.04.2007 he was out of his house for work. He returned back home on hearing about the incident and reached home soon after the occurrence and found Samina with burn injuries and she was taken to the hospital for treatment. When Samina was brought back from Goalpara Civil Hospital, she stated that Fulbar, Jafar and Shajahan wanted her to marry Mustafa and as such, all of them threatened her. Prior to about 6 months from the incident, Samina informed him that on her way to school, Mustafa troubled her along with other three accused and wanted her to force to marry Mustafa and that otherwise she would be kidnapped. He was present in a discussion with the father of the accused in regard to troubling her by the accused Mustafa and other accused.

In his cross-examination, PW 4 replied that he did not say anything to the accused when there was family discussion. No case was filed against them at that time. The victim consumed poison, but he could not say where from she got it. His daughter was brought back from Goalpara Civil Hospital as they desired to treat her at home. Doctor discharged her on 19.04.2007. Though she was referred to GMCH, Guwahati, but they could not take her as they did not have the financial strength. It was suggested that due to lack of proper treatment as well as wrong treatment, his daughter died.

10. PW 5 is Sajiran Nessa, who is the mother of the deceased. She deposed in her evidence that about three and half years back, she went to the bank of river. When she returned home, she found

his daughter engulfed with fire near to the latrine. Then her daughter raised hue and cry. She told her that Mustafa, Shajahan, Jafar and Fulbar had entered into their house premises and tortured her and they attempted to outrage her modesty and out of humiliation and frustration, she consumed poison and thereafter tried to burn herself. All the four accused persons were found at the spot. Hazarat Ali also arrived. Mustafa attempted to extinguish the fire by pouring water on Samina. The other three also attempted to contain the fire by spraying sand on her. They called for a bichar by calling some of the villagers. Bichar was called for against all the four accused but their guardians were not amenable to it. She was treated at Abhayapuri Hospital and thereafter at Goalpara Civil Hospital. Then Samina was brought back home and died thereafter.

In her cross-examination, PW 5 replied that they did not file any case against the accused prior to the incident. In the bichar, Shajahan, Anowara, Azahar, Sofior were present. But the bichar did not take place. On her arrival at home, he found Mustafa and three other accused. Hazarat Ali also found at that time at the place of occurrence. On her arrival at home, Sobori, daughter of Siddique was found pouring water on her daughter. Mustafa did not come to them with any marriage proposal, but he only put it to her daughter. Her daughter informed her that on the date of incident all the accused persons troubled her.

11. PW 6 is Hazrat Ali, who is the brother of the deceased. He deposed in his evidence that at about 3.30 PM at the relevant date he was at paddy field. When he came home, he found his sister Samina with burn injury near to their latrine. He had seen the accused going away from

their premises. She was taken to Abhayapuri Civil Hospital and thereafter to Goalpara Civil Hospital. Samina stated in presence of others to him that the accused came inside the house premises and Mustafa attempted to pull her out from home by catching hold of her and other three accused Shajahan, Jafar and Fulbar helped him. Mustafa threatened that he would kidnap Samina and the other accused also abetted him. Bichar was called in their village in this regard prior to the incident and consequently on that relevant day, in their absence, they made the attempt to kidnap his sister and hence, his sister took the extreme step out of humiliation and frustration. She was at home for about 10 days after she was brought from Goalpara Hospital and thereafter died.

In his cross-examination, PW 6 replied that they did not file any case earlier. Prior to his arrival, some other people arrived at the place of occurrence, but he could not say whether his mother was at the place of occurrence. The house of Shajahan is next to their house. Siddique also another neighbour. The other neighbour is Sukur Ali. It was suggested that his sister did not state to him anything about any trouble given by any of the accused or about any threat to kidnap her because she was not in a position to speak after getting the burn injury.

12. PW 7 is Mozibor Rahman. He deposed in his evidence that about three years back there was hulla in the house of Samsul at about 3.30 PM. He went there and found Samina was burnt by fire. She was the daughter of Samsul who was studying in Class VII or VIII. He could not say how fire burnt on her. She was in a position to talk. Police asked Samina about the cause of fire. When she was taken back from Hospital

and she stated that due to torture on her by Golam Mustafa, Fulbar, Jafar and Shajahan, she had set fire on her to kill herself. Samina died later on at her own house.

In his cross-examination, PW 7 replied that he could not recall the date when the I.O. recorded the statement of the Samina in the house after her return from the hospital. He did not see while she was burning. There was extensive burn injury, but she was able to talk. After about 10 days of taking her back from hospital, she died.

13. PW 9 is Anowara Khatun. She deposed in her evidence that Samina was the sister of Sofior Rahman. About three years back, the incident took place. Samina is her sister's daughter. Golam is a cultivator. He used to tease Samina prior to one year of the incident. He wanted to marry her. The other three instigated her. On 16.04.2007 at noon time, mother of Samina Sajiron Nessa went to nearby river for taking bath. Sofior went to Panchayat. Samsul Hoque, father of Samina went out to work. Except Samina none were present at home and taking advantage of that situation, Golam Mustafa attempted to lift her and pulled her by her hands for kidnapping. The other three were waiting outside. But on raising hue and cry, Hazarat Ali, Saidul Islam arrived and then the accused fled towards west of the house towards bamboo grove. Thereafter out of shame, Samina consumed poison. As she was still alive, she took five pieces of clothes on her and poured kerosene on it and went to the latrine and put fire on her. When the fencing was burnt down, Samina ran out of the latrine. At that time Soburi sprayed soil and Mustafa water on Samina to put out the fire. At that time Hazarat and Saidul arrived. This facts were

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narrated to him and other by Samina. She was capable of talking till the time of her death. On 16<sup>th</sup> the burn took place. She died on 25<sup>th</sup> of the same month.

In her cross-examination, PW 9 replied that within 10 minutes from the incident, she arrived at the place of occurrence at about 3.40 PM. On her arrival, Sukur Ali, Makram Ali, Moziron, Khodeja and many others arrived. Hazarat Ali, Mohibul Islam, Moleka Khatun, Noziran Nessa took Samina to hospital in a Thela. Though Golam Mustafa used to tease Samina on her way to school, they wanted to go to the police station but the village elder wanted to settle the matter in stead of going to the police station.

14. PW 10 is Habibor Rahman. He deposed in his evidence that on 19<sup>th</sup> Samina was brought back from the hospital to her home. On 20<sup>th</sup> the Investigating Officer recorded her statement and he was present at that time. She stated to the Investigating Officer that on 16.04.2007 Golam came to her house when she was alone and pulled by her hands to take her out. While the other accused Shajahan, Fulbar and Jafar were waiting outside. Golam wanted to take Samina to his house then Samina raised hue and cry and the accused fled away. Thereafter Golam was waiting towards west of the house of Samina near to the bamboo grove. Golam wanted to marry her. Unable to bear the torture of Golam, Samina consumed poison and as she did not die, she took 4/5 clothes on he person and poured kerosene and she went to the toilet and put fire on her. When the thatched got burnt, she came out and Sofior sprayed soil on her and Golam poured water by a bucket to extinguish the fire. At that time, Hazarat arrived and

the accused fled away.

In his cross-examination, PW 10 replied that he did not know the neighbours of Samina. He only knew Siddique. It was suggested that on 20.04.2007 Samina was not in a position to talk.

15. PW 11 is Maleka Khatun. She deposed before the Court that Samina Khatun is the wife of her brother-in-law. She went to the house of Samina for taking chilly. Then she found the four accused Shajahan, Fulabar and Jafar. Mustafa was seen inside the kitchen when she met Samina. She informed Golam Mustafa about removing of clothes. Samina asked her not to disclose anyone about it. Then she returned to home and after sometime, she heard hulla in the house of Samina. On arrival, she found Samina was burning with fire and Subari tried to contain the fire by spraying sands and Golam poured water on her. At that time, Hazarat arrived there and thereafter Samina was taken to hospital. She came to know from Samina that accused Golam Mustafa had tortured her along with three others and being unable to bear their torture, she attempted to kill herself.

16. PW 12 is Khadeja Begum. She deposed in her evidence that she is a neighbour of Samina. He could learn that since last one year, Mustafa used to trouble Samina while she was on her way to school. On the date of incident, having seen fire in the latrine of Samina, she rushed there and she covered her body by a gamocha as her wearing clothes were already burnt. Thereafter Samina was taken to hospital and subsequently she died after about nine days.

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In her cross-examination, PW 12 replied that from Abhayapuri hospital, she was taken to Goalpara Civil Hospital and thereafter she was brought back to her home and after two days, she died.

17. PW 13 is Maziran Nessa. She also a neighbour of the deceased. According to her, Golam Mustafa used to pursue Samina on her way to school and back from school and troubled her prior to about 2 years. On this matter Sofior wanted to call for a village bichar but the father of Golam Mustafa prevented. There was fire in the latrine of Samina. All the four accused were near to the house of Samina. When fire was burning Samina, Golam Mustafa had poured one bucket of water on her and Fulbar, Shajahan and Jafar were also there and they are close neighbour of Samina.

18. PW 14 Sukur Ali, PW 15, Mograb Ali and PW 16 Rahul Barik deposed in their evidence that about three years back, Samina died of burn injuries. They did not know how fire burnt Samina or what was the cause behind it.

19. PW 17 Ajaharul Ahmed. He deposed before the Court that Samina was his sister's daughter. He was informed by Sofior about the incident of burnt over phone. Shajahan, accused is his friend. Mustafa wanted to have love with Samina, but there was no love from the side of Samina but yet Golam Mustafa pursued her and troubled her. On his arrival, Samina was found in her house premises. She was taken to Abhayapuri hospital but thereafter she was referred to Goalpara Civil Hospital. During her stay at Goalpara Civil Hospital, she informed him

that these four accused Golam Mustafa, Shajahan, Jafar and Fulbar attempted to drag her out of her house for marrying her and at that time, other family members were outside home. Unable to bear their torture, she put fire on her body to end her life. She died at her home when brought back.

In his cross-examination, PW 17 replied that on 18<sup>th</sup> Abhayapuri Hospital sent her to Goalpara Civil Hospital. They brought Samina from Goalpara Civil Hospital of their own even though she was not released by the hospital authority. About 2/3 days prior to death of Samina, her statement was recorded by Magistrate. He was present at that time. Anowar, Khodeja were also present at that time. Saidul Islam, Rahul were also present.

20. After going through the evidence of aforesaid witnesses, it is seen that the victim Samina Khatun while going towards her school, the accused Golam Mustafa along with other accused persons used to restrain her way, used some filthy words towards her. Golam Mustafa wanted to marry her and also threatened her if she did not agree to marry him, she would be kidnapped. On the date of incident i.e. on 16.04.2007 at about 3.30 PM, accused persons entered into the house of the victim in absence of other members of her family and accused Golam Mustafa pulled her hands and tried to outrage her modesty. When she raised alarm, some people came. Out of shame and frustration, she consumed poison to kill herself and thereafter poured kerosene oil on her body and set fire. She was taken to the Abhayapuri hospital. Thereafter shifted to Goalpara Civil Hospital. It also appears from the evidence on

record that the victim was referred to GMCH for better treatment, but as the victim's family members was not in a position to meet the expenditure of GMCH or other hospital, the victim was taken back home. After some days, she died. All the witnesses, examined by the prosecution, have more or less admitted the fact that accused Golam Mustafa and three other accused used to tease the deceased on her way to school. Some of the witnesses i.e. PW 2, PW 5, PW 6 categorically stated that when they arrived to the spot, they found the four accused persons on the place of occurrence.

21. PW 8 is Dr. Lohit Pegu. He deposed in his evidence that on 25.04.2007, he was at Boitamari PHC. On that day, in connection with Abhayapuri P.S. Case No. 72/2007, he conducted postmortem examination on the dead body of Samina Khatun, aged about 15 years and found as follows:

90% to 95% of body surface was seen burnt and her hair was found partially burnt. No other injury found.

Doctor opined that the cause of death is due to shock and circulatory failure following the burn injury.

Some questions was put to PW 8 i.e. was the injured capable of talking after sustaining burn injury from 90% to 95% and it was opined that in the instant case, the nature of injury showed that she had sustained burn injury on her body, but her vocal cord or other organs were not affected. So, she was in a position to talk. As such, even after the burn,

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she was in a position to talk.

22. PW 18 is Dr. Badal Ch. Sarkar, who first examined the victim at Abhayapuri CHC. He deposed in his evidence that on 16.04.2007 he was at Abhayapuri CHC. On that day while he was on duty at the Hospital, Smti. Samina Khatun was brought to the Hospital with burn injuries and the patient was initially attended by Dr. Reza Amin and wanted me to record the Dying Declaration. Dr. Reza Amin recorded the Dying Declaration in his presence wherein he put his signature. In a nutshell she stated that one of the neighbour and three other had tortured to such an unendurable extent that she had consumed poison and poured kerosene and set fire on herself.

In his cross-examination, PW 18 replied that the name of the miscreants have not been mentioned. The address of the declarant is also not mentioned. It is not mentioned as to who identified the victim. There is no certificate in regard to mental fitness as well as physical fitness of the victim to make the statement.

23. Learned counsel for the accused has submitted that even if the case of the prosecution is accepted on its face value, still on the basis of the material brought on record by the prosecution, offence U/S 306 IPC is not made out against the accused persons. Hence, the accused persons be acquitted on benefit of doubt. In the dying declaration the name of the accused persons has not been mentioned by the deceased. As such, it has no value in the eye of law. In support of the proposition that too attract the offence of abetment U/S 107 of the IPC, an intentional aiding and

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active complicity is an essential ingredient of said provision and the prosecution has failed to prove the fact that the question whether or not there was any ground for presuming that the accused had committed the alleged offence.

24. In support of his submission, learned counsel placed reliance on some case laws:-

- (i) 2003 Cri.L.J. 3083  
(Dinesh Gopal Bhure v. State of Maharashtra)
- (ii) 2002 Cri. L.J. 2367  
(Raju @ Rajendra Prasad v. State of M.P.)
- (iii) 2004 Cri. L.J. 2718  
(P. Sreenivasulu v. State of Andhra Pradesh)
- (iv) 2004 Cri. L.J. 1447  
(Chinnamma v. State of Kerala)

25. On the other hand, learned Public Prosecutor for the State contended that there is ample material on record for presuming that the accused persons have abetted the commission of suicide by the deceased.

26. Section 306 of the IPC reads as under:

“306: Abetment of suicide – If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either descriptions for a term which may extend to ten years, and shall also be liable to fine”.

27. From a bare reading of the provision, it is clear that to constitute an offence U/S 306 IPC, the prosecution has to establish: (i) that a person committed suicide, and (ii) that such suicide was abetted by the accused. In other words, an offence U/S 306 IPC would stand only if there is an 'abetment' for the commission of the crime. The parameters of 'abetment' have been stated in Section 107 of the IPC which defines abetment of a thing as follows:

“107. Abetment of thing .- 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 takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

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

Explanation 1- A person who by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily caused or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.”

28. As per the said Section, a person can be said to have abetted in doing a thing, if he, firstly, 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; or thirdly, intentionally aids, by any act or illegal omission, the doing of that thing. Explanation to Section 107 states that any wilful misrepresentation or wilful concealment of material fact which he is bound to disclose, may also come within the contours of 'abetment'. It is manifest that under all the three situations, direct involvement of the person or persons concerned in the commission of offence of suicide is essential to bring home the offence under Section 306 of the IPC.

29. Therefore, the question for consideration is whether the allegations levelled against the accused in the FIR and the material collected during the course of investigation, would attract any one of the ingredients of Section 107 IPC.

30. As per clause, firstly in the said Section, a person can be said to have abetted in doing of a thing, who 'instigates' any person to do that thing. The word 'instigate' is not defined in the Indian Penal Code. The meaning of the said word was considered by the Hon'ble Supreme Court in the case of *Ramesh Kumar Vs. State of Chattisgarh*, (2001 Cri. L.J. 4724).

31. In the said case, the three-Judge Bench stated that the 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. 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 to be inferred.

32. Thus to constitute 'instigation', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other by 'goading' or 'urging forward'. The dictionary meaning of the word 'goad' is "a thing that stimulates someone into action, provoke to action or reaction", "to keep irritating or annoying somebody until he reacts". Similarly, 'urge' means to advise or try hard to persuade somebody to do something or to make a person to move more quickly and or in a particular direction, especially by pushing or forcing such person. Therefore, a person who instigates another has to 'goad' or "urge forward" the latter with intention to provoke, incite or encourage the doing of an act by the latter. As observed in Ramesh Kumar's case (supra), where the accused by his acts or by a continued course of conduct creates such circumstances that the deceased was left with no other option except to commit suicide, an instigation may be inferred. In other words, in order to prove that the accused abetted commission of suicide by a person, it has to be established that – (i) the accused kept on irritating or annoying the deceased by words, deeds or wilful omission or conduct which may even be a wilful silence until the deceased reacted or pushed or forced the deceased by his deeds, words; and (ii) that the accused had the intention to provoke, urge or

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encourage the deceased to commit suicide while acting in the manner noted above. Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

33. In the background of this legal position, we may advert to the case at hand. The question is as to what is the cause of a suicide has no easy answers because suicidal ideation and behaviours in human beings are complex and multifaceted. Different individuals in the same situation react and behave differently because of the personal meaning they add to each event, thus accounting for individual vulnerability to suicide. Each individual's suicidability pattern depends on his inner subjective experience of mental pain, fear and loss of self-respect. Each of these factors are crucial and exacerbating contributor to an individual's vulnerability to end his own life, which may either be an attempt for self-protection or an escapism from intolerable self.

34. In the present case, the witnesses examined by the prosecution alleged that the accused persons used to tease the victim on her way to school and back. Accused Golam Mustafa wanted to marry her and other accused persons also intended her to marry Golam Mustafa. The evidence shows that threatening was given to the deceased by the accused to kidnap her if she disagrees to marry Golam Mustafa. On the date of incident, in absence of any family members, all the accused persons came to the house of the victim. Golam Mustafa pulled her hands and tried to take her out from home and other accused persons were waiting outside and when she raised alarm, the accused persons had left the place and

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soon thereafter she committed suicide by pouring kerosene oil on her clothes and set fire.

35. In this case, four DWs were examined. DW 1 is Mainuddin, who is a tailor by profession. He deposed in his evidence that he has a tailoring shop at Lengtisinga and on 16.04.2007 he employed Golam Mustafa to work in his tailoring shop. On that day at about 7 AM, Golam Mustafa came to his shop and he closed his shop at about 7 PM and after that he and Golam Mustafa returned back home at about 8.30 PM. But the accused Golam Mustafa when his statement was recorded U/S 313 CrPC did not say that he was busy in the tailoring shop of Mainuddin on the date of incident i.e. on 16.04.2007 rather he stated that they have a land dispute with the family members of the victim Samina for which this false case has been instituted against him. The other three DWs examined in this case did not say anything which would help the defence to entertain the plea of denial.

36. The Investigating Officer, Saminul Islam (PW 22) deposed in his evidence that on 20.04.2007 he recorded the statement of the victim Samina Khatun in her house in presence of Habibur Rahman and Anowara Khatun, which was exhibited in this case as Ext-5 by Anowara Khatun and Habibur Rahman. Both the witnesses supported the fact that in their presence statement of the victim Samina Khatun was recorded by the Investigating Officer. In her statement the victim clearly stated that on the date of incident i.e. on 16.04.2007 she was working in her house. Her mother went out for taking bath and her brother went to the office and her father also went out to work and she was alone in her

house. By taking such advantage of being alone in her house, Golam Mustafa came to her house, pulled her hands. Shajahan Ali, Jafar Ali and Fulbar Ali were waiting adjacent to her house to take her out from her house. When she raised alarm, they left the place. The accused Golam Mustafa for last one year made trouble to marry her on her way to school. Thereafter out of shame and humiliation, she took poison. As she had not died, she took five pieces of clothes, poured kerosene oil and went to their latrine and set fire on her. After taking treatment in different hospitals, the victim was taken back home and accordingly, the statement of the victim was recorded by the I.O. on 20.04.2007 and she died at home on 25.04.2007. The statement of the victim recorded by the Investigating Officer was not challenged in this case and after her death which can be treated as dying declaration also.

37. In the case of *Mannu Raja vs. State of M.P.* (1976 Cri.L.J. 1718) it has held that -

“After making dying declaration before the Police, the victim succumbed to the injuries. This statement can be treated as a dying declaration and is admissible under Section 32(1) of the Evidence Act. The maker of the statement is dead and the said statement related to the cause of his death.”

38. Considering the factual backdrop, it can be said that the dying declaration made by the deceased has the ring of truth and the testimony of Doctor (PW 8), Anowara Khatun (PW 9) and Habibar Rahman (PW 10) clearly establishes that she was in a fit condition to make

statement.

39. In view of the above discussion, I am of the opinion that the prosecution has considerably proved the case against the accused persons U/S 448/354/306/34 IPC and hence, they are convicted thereunder.

40. The accused persons are heard on the point of sentence. They have submitted that their family consists of their wives, small children and their age old parents and they are the only earning members of their families. If they are sent to jail, their family members will face great hardship and they prayed for leniency.

**O R D E R**

I convict the accused Golam Mustafa, Shajahan Ali, Jafar Ali and Fulbar Ali U/S 448/306/354/ 34 IPC and sentence them to pay a fine of Rs. 500/- each for the offence U/S 448/34 IPC i/d, S.I. for one month each, R.I. for 8 (eight) years each for the offence U/S 306/34 IPC and to pay a fine of Rs. 2,000/- (Rupees Two Thousand) each i/d, R.I. for six months each and also to R.I. for one year each for the offence U/S 354/34 IPC and to pay a fine of Rs. 1,000/- (Rupees One Thousand) each i/d, R.I. for 2 months each. All the sentences shall run concurrently.

The period which they detained in custody shall be set off from the period of imprisonment imposed on them.

Copy of Judgment be furnished to the accused free of cost.

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Copy of the Judgment and Order be sent to Deputy Commissioner, Bongaigaon as per provision U/S 365 CrPC.

LCR be transmitted back to the learned court below with a copy of this judgment and order.

Given under my hand and the seal of the court on this 7<sup>th</sup> day of *March, 2015*.

( M. Nandi )  
Sessions Judge,  
Bongaigaon.

*Dictated and corrected by me,*

( M. Nandi )  
Sessions Judge,  
Bongaigaon.

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A N N E X U R E

Prosecution witness:

PW 1 – Sofior Rahman  
PW 2 – Mohibul Hoque  
PW 3 – Lal Bhanu  
PW 4 – Samsul Hoque  
PW 5 – Sajiran Nessa  
PW 6 – Hazrat Ali  
PW 7 – Mozibar Rahman  
PW 8 – Dr. Lohit Pegu (M.O.)  
PW 9 – Anowara Khatun  
PW 10 – Habibor Rahman  
PW 11 – Maleka Khatun  
PW 12 – Khodeja Begum  
PW 13 – Maziran Nessa  
PW 14 – Sukur Ali  
PW 15 – Mograd Ali  
PW 16 – Rahul Barik  
PW 17 – Ajaharul Ahmed  
PW 18 – Dr. Badal Ch. Sarkar (M.O.)  
PW 19 – Farida Khatun  
PW 20 – Dr. Reza M.A. Amin (M.O.)  
PW 21 – Mamej Ali Ahmed  
PW 22 – Samiul Islam

Exhibit (Prosecution):

Ext-1 Ejahar.  
Ext-2 Inquest report.  
Ext-3 Seizure list.  
Ext-4 Postmortem report.  
Ext-5 Statement of the victim.  
Ext-6 Dying declaration.  
Ext-7 Certificate of Medical Officer dtd. 27.04.2007.  
Ext-8 Final Form/Report.  
Ext-9 Extract copy of GD Entry No. 246 dtd. 17.04.2012.  
Ext-10 Sketch map.

Material Exhibit (Prosecution):

M. Ext-1 One plastic bag without handle.

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M. Ext-2 One empty bottle of insecticide.

Defence Witness:

DW 1 – Mainuddin

DW 2 – Asgar Ali

DW 3 – Suburi Khatun

DW 4 – Ekkabar Ali

Defence Exhibit:

Nil.

( M. Nandi )  
Sessions Judge,  
Bongaigaon

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