

**In the Court of Judicial Magistrate, 1st Class , 2nd Court, Alipore**

**Present: Smt. Dalia Bhattacharya, UID-1171**

**Judicial Magistrate, 1st Class, 2nd Court,**

**Alipore, South-24 Parganas**

**A.C.G.R – 12789/ 2012**

**T.R. –56/2021**

**Registration no. 12789/2012**

**CNR No- WBSP050066192012**

**State**

**-vs-**

**Sudhhojit Banerjee**

**.....Accused person**

**Offense Under Sections.- 66C/66D/67A of Information Technology Act.**

**Arising out of Jadavpur P.S. case no. 130 dated 01/03/2012**

**Date of delivery of Judgment- 22/03/2021**

**1.Factual Backdrops :**

a) The prosecution case as revealed from the record, in a nutshell, is that a written complaint was filed by the de-facto complainant Kishore Brata Ghosh before the Officer-in-charge of Jadavpur P.S. to the effect that one fake profile was created in social networking website "Facebook.Com" in the name of the daughter of the complainant namely Kinnori Ghosh by providing her personal information and posting vulgar and offensive language in terms of sexually explicit act and hence he filed the instant case.

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b) Thereafter, Jadavpur P.S. case no. 130 dated 01/03/2011 was initiated and after investigation charge-sheet no. 61/2013 dated 08/03/2013 was submitted against the accused persons under Section 66A/66C/66D/67A of Information Technology Act.

c) The accused persons appeared before the Court of Ld. A.C.J.M, Alipore and subsequently, the case was transferred to this Court for trial and disposal. The substance of acquisition under Section **66A/66C/66D/67A of Information Technology Act** was read over and explained to the accused person as per Order dated **05/01/2015**, of this Court, to which he pleaded innocence and claimed to be tried. However, after the judgment of the Hon'ble Apex Court in **Shreya Singhal Case** striking down section **66A of Information Technology Act** the same is redundant and as such the same is deemed to be omitted while adjudicating the instant case.

**2. Evidence on record:**

*The prosecution has relied upon 12 out of 15 charge-sheeted witnesses in order to prove the instant case who are as follows :*

**i) Kishore Brata Ghosh, the de-facto complainant, deposed as P.W 1.**

**ii) Papiya Ghosh, deposed as P.W 2.**

**iii) Kinnori Ghosh, deposed as P.W 3.**

**iv) Arun Kumar Pal deposed as P.W 4.**

**v) ASI Dilip Mallick deposed as P.W 5.**

**vi) Bidisha Banerjee deposed as P.W 6.**

**vii) Suchit Banerjee deposed as P.W 7.**

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viii) Ayan Dutta deposed as P.W 8.

ix) Ankita Dey deposed as P.W 9.

x) Manoj Kumar Barik deposed as P.W 10.

xi) Samir Narayan Kundu deposed as P.W. 11.

xii) Ashok Chakraborty deposed as P.W 12.

Following documents have been marked as Exhibit in support of the prosecution case:-

| Serial No. | Document       | Exhibit No.   |
|------------|----------------|---|
| 1          | Exbt-1         | Written complaint   |
| 2          | Exbt-1/1       | Signature on written complaint  |
| 3          | Exbt - 2       | Report dated 31.10.2012 (four pages)  |
| 4          | Exbt- 3 series | Self-signature with official seal   |
| 5          | Exbt- 4 series | Signature with official seal of director Priyankar Ghosh  |
| 6          | MAT-1          | The cloth packet containing Ext.-A (one black coloured Lenovo personal computer) and Ext.-AHDD1 (Seagate 320GB Hard disk drive) |

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| 7  | Exbt. - 5 | Self-Signature with date of 31.10.2012 upon the MAT-1  |
| 8  | MAT-2     | The cloth packet containing Ext.-B (one blue colour BSNL Broad band Telecom Modem)   |
| 9  | Exbt. - 6 | Self Signature with date of 31.10.2012 upon the MAT-2  |
| 10 | Exbt. - 7 | Sealed envelope containing data and report<br>CFSL(K)/EE/2012(WB)-16 dated 31.10.2012  |
| 11 | Exbt. - 8 | Self signature & date upon the Sealed envelope (Exb.7)   |
| 12 | Exbt. - 9 | Specimen seal (*C.F.S.L. Bal*Kol) upon the left side of 2 <sup>nd</sup> page of report being CFSL(K)/EE/2012(WB)-16 dated 31.10.2012 |

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| 13 | Exbt. - 10            | Report being<br>CFSL(K)/EE/2012(WB)<br>-16 dated 31.10.2012 (2<br>pages)                      |
| 14 | Exbt. -11 series      | Annexure-RELEVANT<br>DATA (AHDD1) of 7<br>pages   |
| 15 | Exbt. -12 & 14 series | Self signature& seal<br>upon Annexure-<br>SEARCH HITS DATA<br>(AHDD1) of 6 pages              |
| 16 | Exbt. -13 series      | Annexure- SEARCH<br>HITS DATA (AHDD1)<br>of 6 pages   |
| 17 | Exbt. - 15 series     | Annexure- PICTURE<br>FILE (AHDD1) of 3<br>pages   |
| 18 | Exbt. - 16 series     | Self signature& seal<br>upon Annexure-<br>PICTURE FILE<br>(AHDD1) of 3 pages                  |
| 19 | MAT-3                 | The envelope<br>CFSL(K)/EE/2012(WB)<br>-16 dated 22.12.2016<br>and CD being ICFD-06-<br>12-CD |

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| 20 | Exbt. - 17 | Self signature upon the CD being ICFD-06-12-CD   |
| 21 | Exbt. - 5  | Self-Signature with date of 31.10.2012 upon the MAT-1  |
| 22 | Exbt-18    | Self signature and date  |
| 23 | Exbt- 19   | Signature of Samit Narayan Kundu   |
| 24 | Exbt- 20   | Signature of Bidisha Banerjee  |
| 25 | Exbt- 21   | BSNL Telephone bill seized from accused's home   |
| 26 | Exbt- 22   | The downloaded email dt. 01.03.2011 (came from kinnorighosh@gmail.com) and the certificate "to be true copy" |

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| 27 | Exbt- 23  | The downloaded email dt. 01.03.2011 (came from kinnorighosh@gmail.com addressing to D.I.G., CID) along with endorsement of witness and the certificate “to be true copy” |
| 28 | Exbt - 24 | The original letter dt. 11.03.2011 which was sent to Facebook Inc.   |
| 29 | Exbt- 25  | The forwarding (containing email id of sender-Kinnori Ghosh & recipient-OC Cyber CID) of the original letter dt. 11.03.2011  |
| 30 | Exbt - 26 | The downloaded copy of reply from Facebook (2 pages)   |

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| 31 | Exbt. - 27         | The downloaded email of letter dated 26.05.2011 issued to Calcutta telephones seeking information of allotment of dynamic IP address |
| 32 | Exbt. - 28         | The downloaded copy of reply from Calcutta telephones  |
| 33 | Exbt.-28/1 to 28/5 | The downloaded copy of attachment files (5 pages) (with the reply from Calcutta telephones)  |
| 34 | Exbt.-29 and 29/1  | The downloaded copy of query from BSNL online directory search portal (stating the details of “Banerjee Suchit”) (2 pages)           |

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| 37 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 38 | Exbt- 33 | Signature upon the carbon copy of Zimmanama dt. 28.11.2011              |
| 39 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 40 | Exbt- 33 | Signature upon the carbon copy of Zimmanama dt. 28.11.2011              |
| 41 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 42 | Exbt- 33 | Signature upon the carbon copy of Zimmanama dt. 28.11.2011              |

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| 43 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 44 | Exbt- 33 | Signature upon the carbon copy of Zimmanama dt. 28.11.2011              |
| 45 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 46 | Exbt- 33 | Signature upon the carbon copy of Zimmanama dt. 28.11.2011              |
| 47 | Exbt. 32 | Signature upon seizure list dated 28.11.2011<br>(One computer & Laptop) |
| 48 | Exbt. 40 | Zimmanama by which one Samsung phone was returned to Suchit Banerjee    |

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| 49 | Exbt-X series for identification | Two downloaded copies annexed with the written complaint   |
| 50 | Exbt. 41 series                  | the printouts of the screenshots (five pages) created in the said fake Facebook profile along with certificate u/s 65B |

3.The accused person was examined u/s 313 Cr. P.C. and pleaded innocence.

4. No evidence was adduced on behalf of the accused persons.

5. Heard the argument made by the Ld. A.P.P. and Ld. Defence Counsel.

**6. Points for Consideration.**

a.) Whether the accused person committed the offenses labeled against him being that of creating a fake Facebook profile in the name of Kinnori Ghosh being the daughter of the defacto complainant Kishore Brata Ghosh in such a nature that her personal information regarding her operation was posted therein along with her morphed photographs and using offensive language in terms of sexually explicit act?

b.) Whether the prosecution has been able to prove the instant case beyond all shadows of reasonable doubt?

**7. Decision with reasons :**

A Cyber Crime is a criminal activity that is committed using a computer, a network device or the internet. Cyber Crimes can be broadly divided into three categories, says criminal lawyer ***Omkar Mulekar***. First, virus attacks, hacking data, malwares like trojan horse; second, publishing illegal material and obscene data like pornography and third: financial crimes which are committed with malicious intent like impersonation and misusing credit or debit cards. The crime is profit-driven, may include theft and resale of personal information, says Mulekar.

**Identity theft**

Impersonation is the most common type of identity theft. Once a complaint is filed with the police, the law enforcement body usually reaches out to the entity or platform on which the incident or hacking has taken place. The internet protocol address or the hacker is traceable-the police then takes the investigation forward based on the cybercell's report.

i) In celebrated judgement by the Supreme Court of United States of America ***(US) in ACLU v. Reno, 521 US 844(1997)*** we got the definition of internet, the very platform of the virtual world in the following way:

***“The internet is an international network of interconnected computers.”***

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As per Locard's exchange principal the perpetrator of a crime will bring something into the crime scene and leaves something behind that can be used as forensic evidence. In other words every contact leaves a trace.

ii) As per the traceability rule of obtaining the name of the suspect in cyber crime, at **first** the **I.P. address** has to be traced from which the **second** path that is , the **I.S.P.** is traced. **Thirdly**, the technical record of the I.S.P. shall indicate the **user account** which was used in the said I.P. address at the **relevant time** and **finally** its administrative records will establish the **real world** identity of the **individual**.

iii) In order to avoid unnecessary repetition and for the sake of brevity and convenience all the points of consideration are taken up together for discussion and adjudication.

iv) In order to establish the instant case it is pertinent to discuss here the provisions of law and the sections under which charge is framed against the accused person in this case.

**In case of a charge U/S 66C of Information Technology Act it is essential to prove that**

**PUNISHMENT FOR IDENTITY THEFT.** -Whoever, fraudulently or dishonestly make use of the electronic signature, password or any other unique identification feature of any other person, shall be punished with imprisonment of either description for a term which may extend to three years

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and shall also be liable to fine with may extend to rupees one lakh.

**In case of a charge U/S 66D of Information Technology Act it is essential to prove that**

**PUNISHMENT FOR CHEATING BY PERSONATION BY USING COMPUTER RESOURCE.** -Whoever, by means for any communication device or computer resource cheats by personating, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine which may extend to one lakh rupees.

**In case of a charge U/S 67A of Information Technology Act it is essential to prove that**

**PUNISHMENT FOR PUBLISHING OR TRANSMITTING OF MATERIAL CONTAINING SEXUALLY EXPLICIT ACT, ETC., IN ELECTRONIC FORM.** - *Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees.*

v) In order to establish the commission of an offence under the alleged sections it is at first required to prove beyond reasonable doubt that the accused person has created the fake Facebook profile in the name of daughter

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of the complainant namely Kinnori Ghosh to exhibit her wrongly in social media as a sexually exposed woman. To establish the same it is required to have a detailed discussion regarding the evidence adduced by the prosecution.

**vi)** PW-1 the defacto complainant stated on dock that he is a practicing advocate at Calcutta High Court for 30 years and since 2013 he has been practicing before the Hon'ble Apex Court. He stated it that his daughter Kinnori Ghosh was born on 24/04/1991 and in the year 2011 she was approximately 20 years old and was a student of LLB from Gujrat National Law University. He also stated it that she has studied at Carmel Convent School at Jodhpur Park and met with an accident in the year 2002 on 11th May in front of the school gate. He further stated it that in the year 2010 in October he found a fake Facebook profile has been created in the name of his daughter Kinnori Ghosh using vulgar and sexually explicit act to assassinate her character and exhibiting her as a prostitute. He had initially filed the case against unknown miscreant and after investigation it was revealed that one Suddhachit Banerjee was involved in this offence and accordingly he was arrested on 02/09/2011 by CID West Bengal. He has also identified the accused person on dock.

**vii)** During his cross-examination he stated it that police did not seize his mobile phone or computer or the same of his daughter.

**viii)** PW-1 has also been examined on dock on recall and also been cross-examined during which he has exhibited certain documents.

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ix) The defacto complainant being the father of the victim has clearly stated it on dock in his examination in chief that a fake facebook profile has been created in the name of his daughter Kinnori Ghosh who was pursuing career in law at the relevant time where her character has been portrayed as a woman of immoral character. He has also filed documents to establish the fact that at the relevant time when the Facebook profile chat was initiated from the alleged fake Facebook profile the same was being used by the accused person to demean the character of the victim Kinnori Ghosh. Although Ld. Defence Counsel has tested the veracity of the witness by questioning it if the defacto complainant being an Advocate himself has influenced the investigation of the instant case but he has clearly stated it that he has only co-operated with the investigating officer when his co-operation was sort for. Moreover it is a settled principal of law that a faulty investigation shall not vitiate the testimony which is otherwise credible in the eye of law.

x) **Irregularity in investigation** - It is true that section **78 of Information Technology Act** provides that the offence under this act will be investigated by an officer to the rank of inspector and above. In the present case, in the cross examination of PW-8, 11 and 12, the defense side desperately tried to prove that the investigation was done by PW-8 and PW – 11 and 12 proceeded as per instructions of PW-8. The defence tried to prove that as because the PW-8 at that moment of relevant time was in the rank of Sub-Inspector of Police, so he could not or should not have investigated the present case which was under Information Technology Act. But such an effort of the defence proved to be futile in the context of settled principle of law which was found in **Jodha**

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*Khoda Rabari v. State of Gujarat, 1992 SCC Online Guj279 ; 1992 Cri LJ 3298 ; 1992 CriLR (Guj) 282 at page 3368 -*

*“139. In the present case, though the learned Judicial Magistrate First Class has committed some illegality in remanding Jashubha.....Even if it was illegal custody, the evidence about discovery which is otherwise relevant, would not be tainted because of the illegality or irregularity and could not be shut out on that score.”*

**xi)** In the present case the probative value of the relevant and admissible evidences will always over power or supersede any latches in the process of investigation and it can safely be observed comparing to that the minor irregularities or the present minor defects in the investigation, if any, will never vitiate or come in the way of the very core of evidence which is enjoying the all-important probative-value. It is also pertinent to mention that the role of PW-8 , was of an enquiry officer and not of an investigating officer. It is further pertinent to mention that the enquiry whatever be made by PW-8 was before the control of the investigation was taken over by the CID, West Bengal. Hence, technically speaking the evidence of PW-8, who has a very important role in this case and who has provided the basis of electronic evidence on which the prosecution case is mostly build upon, can never be discarded on a flimsy ground as to his role in the entire investigation.

**xii)** It is a fact that the input obtained in the enquiry prior the case was taken control of by the CID, West Bengal has shown a guideline to the

investigation made by CID, West Bengal from 01.09.2011. Following observations of Hon'ble Court are important in this respect

*(2004)3 SCC 654;2004 SCC CRI 851 Not fatal to prosecution where ocular testimony is found credible and cogent-court has to be circumspect while evaluating the evidence in a case of such type. Thus accused cannot be acquitted solely on account of defect in investigation.*

*AIR 2010 SC 2119 Defective investigation effect held criminal justice should not be made a casualty for wrongs committed in State of Madhya pradesh vs Chamru, 2007 12 SCC 423-Defective investigation cannot be a ground to discard credible evidence.*

xiii) PW-2 namely Papiya Ghosh, being the wife of the defacto-complainant and mother of the victim has stated on dock that in June, 2012 the instant incident occurred when the victim was staying at a hostel and studying law at National Law University, Gujrat . She further stated it that in the month of September and October when she came back home during puja vacation she found that one fake profile has been created in facebook by someone in her name to assassinate her character using abusive word like prostitute and by uploading her vulgar pictures. She has also stated it that when her daughter saw the same she was disturbed and informed the same to her and she has inturn informed her husband who has subsequently filed the written complaint at Jadavpur P.S.. In her cross-examination she stated it that although there was no vacation on occasion of Durga Puja but her daughter was on vacation during Diwali.

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xiv) Thus the evidence of PW-2 corroborates with the evidence of PW-1 regarding the fact that the victim Kinnori Ghosh has faced character assassination when a facebook profile was opened in her name exhibiting her as a prostitute and subsequently they came to know from the investigating authority that it was accused Suddhachit Banerjee who has done the maleficent activity.

xv) The next witness who deposed on dock is Kinnori Ghosh, the victim who has been examined as PW-3 has stated it that she has studied law and is presently practicing at Hon'ble Delhi High Court, Hon'ble Supreme Court and other Honb'le High Courts. She stated it that she was born on 24/07/1991 and in the month of March 2011 she was pursuing B.A.LL.B. Honours from Gujrat National Law University and she has passed High Secondary Education from Carmel Higher Secondary School. She further stated it that her father lodged a complaint on 01/03/2011 before Jadavpur P.S. as fake profile was opened in her name in facebook using her original identification and personal information where vulgar and obscene information regarding her and her character was depicted. She also stated it that the alleged facebook profile fabricated information regarding her accident on 11/05/2002 and uploaded picture portraying her as a prostitute and call girl inviting offers for unlawful purpose and at that time she did not know who created the said profile and she informed the matter to her mother Papiya Ghosh as her father was busy and then her mother informed the same to her father who has thereafter lodged a complaint. She also identified accused Suddhachit Banerjee as a person of her age and stated it that that she heard it that he was the boyfriend of her

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classmate Ankita Dey of Carmel High School. In her cross-examination she stated it that she knew Ankita Dey since 2002 to 2010 as they studied in Carmel School. She further stated it that in her cross-examination that display picture in the said fake facebook profile was of a cartoon but inside the profile there was a morphed picture of herself.

**xvi)** Thus from the deposition of PW3 it is clear that she has corroborated with the FIR filed by her father PW-1 being the defacto complainant and she has also corroborated with the content of the said fake facebook profile as stated and mentioned in the FIR and has also explained how her character was assassinated by the accused persons using her morphed picture and exhibiting her as a prostitute and also depicting her accident on 11/05/2002 in immoral manner. She also stated it that she informed her mother about the said facebook profile which she came across while surfing internet and thereafter her mother informed the same to her father who has filed the instant complaint.

**Xvii)** PW-4 Arun Kumar Paul, the forensic expert in this case stated on dock that he is presently posted as junior scientific officer at Central Forensic Science Laboratory and he was in the same post in the same office in October,2012 and at that time one Priyankar Ghosh was the director of CFSL. He stated it that he received one cloth packet containing one black colour lenovo personal computer bearing SNESO6091010 which has been marked as Exhibit-A and he also found one Seagate 32GB Hard disc Drive bearing serial no. 5VMBQ9QG which has been marked as Exhibit-AHDD1 by him and

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another packet was marked as Exhibit-B in which there was one deep blue color BSNL Broad band Teracom modem bearing serial no. 0021002038903. He further stated it that he has forensically imaged Exhibit-AHDD1 to a separate storage media through Encsc software and found that the name of Kinnori Ghosh were found in different files and he submitted detailed report regarding the same which has been signed by director Priyankar Ghosh and also exhibited before this court. He also stated that exhibit seven contains data in readable format which contains the data recovered from Bit stream image of exhibit-AHDD1 which is retained in CFSL Kolkata on 22/12/2016. He also stated it that in the seized hard disc, the hash value number was not written but he voluntarily stated it that he has provided the hash value and same is specifically mentioned in official record and he also admitted it that no hash value is provided to him by the Investigating Officer of this case when the storage media was sent for examination and he also failed to state that if at the time of seizure any photography was done.

**xviii)** It has been argued by the Ld. Defence Counsel that since it is admitted by the the forensic expert himself that the seized computer was not electronically sealed and hence no hash value has been provided to him by the Investigating Officer of this case.

**Minor discrepancies in seizure** – In the present case, when the investigating agency on 01/09/2011 at the house of the accused person seized one modem and one CPU (carrying the suspected hard disc), then the seizure witnesses have not signed on the labels prepared while seizure was made.

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xix) That the defence story was repeatedly reflected on the point of conventional seizure procedures of not having the signature of seizure witnesses on the labels which if at all present in this case is of no consequence or significance as CPU always carry the best and the exclusive identity that is MAC number or any other identifying number which is not so fragile like label etc. and which cannot be deleted or destroyed by any means.

The mail communications and various digital evidences found in the report and extracted data by Central Forensic Science Laboratory expert and otherwise, are the ultimate proof of the physical device and the virtual identity beyond the control of investigating agency or any individual to destroy the same that is why the Hon'ble Court opines this way in **Gajraj v. State (NCT of Delhi) Criminal Appeal No. 2272 of 2010 ((2011) 10 Supreme Court Cases 675), decided on September 22, 2011** – “The IEMI number of the handset, on which the accused-appellant was making calls by using a mobile phone (sim) registered in his name, being evidence of a conclusive nature, cannot be overlooked on the basis of such like minor discrepancies. In fact even a serious discrepancy in oral evidence, would have had to yield to the aforesaid scientific evidence.”

xx) It is also pertinent to mention that reply or the evidence provided by Facebook authority and the BSNL authority can not be presumed to be tampered in the present given context as nobody other than those particular companies have accessed to do that and the defence had not proved any point that there was a reason that they would go to tamper their own data before submitting to investigating authority.

xxi) Moreover it is also seen that the forensic expert has been provided hash value to the seized article by himself and he being the expert himself has issued certificate regarding the authenticity of such documents and never stated it that the certificate is false in anyway.

*Arvindkumar Anupalal Poddar versus State of Maharashtra 2013 (1)SCC (Cri)409 ;2012(11)SCC 172Evidence Act, 1872 – S. 106 and 101- Burden of Proof – if fact is specially in knowledge of any person then burden of proving that fact is upon him – wife running away from matrimonial home – if according to appellant, murdered first wife had ran away from their matrimonial home he should have established the said fact to the satisfaction of court as it was within his special knowledge – it is impossible for prosecution to ascertain facts particularly within knowledge of accused – criminal trial – circumstantial evidence – failure to explain incriminating circumstances – Cr.P.C., 1973, S. 313.*

xxii) Since it is the defence of the accused person that the seized article has been tempered as the same has been opened by the Investigating Officer but no evidence has been adduced by the accused person to establish such contradictory opinion and as such the sanctity of the expert certificate being the forensic expert remains undisturbed.

xxiii) ASI Dilip Mallick being the seizure list witness deposed as PW-5. He has stated on dock that he raided in the house of the accused persons on 01/09/2011 on behalf of Cyber Crime Cell of CID Bhavan and seized some article from the custody and flat of Suchit Banerjee being one Black colour CPU, one modem, one Samsung Mobile and one telephone bill. He identified

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his signature over the seizure list and he stated it that the said articles were seized in his presence.

**xxiv)** PW-6 and PW-7 being the seizure list witnesses and the mother and father respectively of the accused Suddhachit Banerjee namely Bidisha Banerjee and Suchit Banerjee turned hostile. However, PW-6 being the mother of the accused identified her signature over the seizure list and admitted that one mobile phone was seized from their custody, when the aforesaid raid was conducted. On being cross-examined by the Ld. APP he stated it that she has never put her signature on any blank page without going into its details and other than the aforesaid seizure list she has never signed on any blank documents. She also admitted that she did not make any complaint to any authority in regard to putting her signature on any blank paper. However she admitted that on the basis of the said seizure her son was arrested and she told the Investigating Officer that her son namely Suddhachit Banerjee was pursuing his study in the college and for his requirement there was a computer in their house which had an internet connection. In her cross-examination by the Ld. Defence Counsel, she also stated it that the alleged computer was kept in their drawing room where the friends of the accused Suddhachit used to sit.

**xxv)** Although Ld. Defence Counsel tried to shift the focus of the hostile witness being PW-6 by her statement that the alleged computer was kept in the drawing room where the friends of the accused used to sit but no oral or documentary testimony has been adduced by the accused person to prove such

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conduct of the friends of the accused person. She has admitted in her examination in chief and her cross-examination that the mobile no. 9903740723 was seized by the police on the relevant day and she admitted it that it was used by her son Suddhachit Banerjee only. Thus the custody of the aforesaid mobile bearing sim card no. 990374023 is proved beyond reasonable doubts to be in the hands of Suddhachit Banerjee, being the accused person, however its relevancy it to be discussed later.

**xxvi)** PW-7 being the father of the accused person who has turned hostile has admitted it that on 01/09/2011 they had a computer in their house which was used by all of them. He also admitted it that there was Broad band connection of BSNL in their house at the relevant time having no. 24629151 and he also had a mobile connection. He admitted it that police seized the said mobile from him and his son was arrested on 01/09/2011 on the basis of the aforesaid seizure. He admitted it that the mobile connection being no. 9903740723 stood in his name which was seized by police and he also admitted it that the Exhibit-21 being the telephone bill dated 09/05/2011 for the month of June 2011 stood in his own name in respect of the connection bearing no. 24629151. Exhibit 21 being the BSNL Telephone Bill seized from the house of the accused person and Exhibit 28 being the downloaded copy of reply of Calcutta Telephones also prove the fact that the said telephone connection stood in the name of Suchit Banerjee being the father of the accused person.

**xxvii)** Thus from the evidence of PW-7 who is the father of the accused person who has turned hostile it is clear that the seizure list in this case is correct and

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the aforesaid mobile phone and the telephone bill which is allegedly the impugned offending weapon in this case which was allegedly used to demean the character of the victim was seized from the custody of the accused person and his family members and the aforesaid mobile phone was also used exclusively by the accused person himself as stated by his mother being a hostile witness. Both PW-6 as well as PW-7 are also interested witnesses as it is their son who is allegedly the accused person in this case and thus both of them turning hostile is apparently natural human nature. However even after turning hostile both the parents of the accused persons admitted the custody of the impugned mobile phone and the telephone bill which was used in providing internet broad band connection to the house of the accused person.

**xxviii)** PW-8 Namely Ayan Dutta stated on dock that on 01/03/2011 they received an official email from which they came to know that one fake facebook account was opened in the name of Kinnori Ghosh and at that time he was the Officer-in-Charge of Cyber Crime Cell Bhavani Bhavan. He stated it that he received the mail from one Kinnori Ghosh who complained that an unknown person created a fake facebook account in her name without her knowledge and she was maligned in various manner. He filed one downloaded copy of the said email dated 01/03/2011 along with a certificate "to be true copy" which has been marked as Exhibit-22 (with objection). He stated it that the mail was sent to the official mail LOCCYBER @ Cid West Bengal .Gov.in> and the victim has sent another mail with the same content to DIG, CID, Operations Bhavani Bhavan and after receiving the said email he endorsed the same to his sub-ordinate officer and also filed one downloaded

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copy of the same certifying it "to be a true copy" which has been marked as Exhibit-23 (with objection) and after that they sent an email to Facebook INC, California in their official letter head from official email account LOCCYBER @ Cid West Bengal .Gov.in> in .Pdf format and filed scanned copy of the same marked with Exhibit-24(with objection). In the said Exhibit-24 it was inquired if the URL "<http://www.facebook.com/profile.php?id=1000013148616568&ref=ts>" was used in which IP address, alongwith creation registration details with specific date, time, time zone, log in, log out details from creation date to current date along with IP address and specific date time and time zone.

**xxix)** He also stated it that he visited the said url and found a facebook profile in the name of Kinnori Ghosh, and in reply to their letter facebook sent one email through a link clicking which a new Pdf file was opened which was valid for some time. He filed one downloaded copy of the same bearing his certificate which has been marked as Exhibit-26 (with objection). He further stated it that in the reply to his inquiry facebook authorities have stated it that multiple IP addresses were used in the instant enquired profile and the phone number that is used is 919903740723 and the date of registration of the same was 20/07/2010 at 18:58 hours and the ISP(Internet Service Provider) was BSNL and thereafter a letter was issued to Rajan Dutta senior G.M NW(OPSI) GSM Calcutta Telephone regarding the allotment of dynamic IP addresses with MAC address provided by facebook against the specific date and time and downloaded copy of the same along with certificate has been marked as

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Exhibit-27(with objection).

**xxx)** He thereafter stated it that the Calcutta Telephone issued a reply letter to them marked as Exhibit-28(with objection) and from the said reply letter they came to know that the allotted phone number against the dynamic IP address was found in the name of Suchit Banerjee against phone number 03324629151 and one Manoj Kumar Barik against phone number 24618779 and on matching it with date and time stamp they asked to eliminate the name of said Manoj Kumar Barik from the alleged offence as his time zone did not match with the time zone in which the alleged fake profile was active.

**xxxi)** On search of online portal of BSNL Calcutta Telephone against their query they came to know that the telephone number 03324629151 which was used in the alleged fake profile stood in the name of Suchit Banerjee of 270 Garagachha, Belmont-700084 and the mobile number 990374023 which was stated by facebook as the mobile number used in the alleged fake profile also stood in the name of Suchit Banerjee as they came to know from Special Control Room, CID West Bengal. He has also filed certificate along with downloaded copy of the same which is also been exhibited before this court. He thereafter stated it that on 01/09/2011 the Investigating Officer of the case Mr. Sumit Narayan Kundu asked him to associate in raiding the aforesaid address and visiting the said flat they found that one Suchit Banerjee, his wife and son were present there and they also found a PC which was connected with BSNL provided modem and on enquiring as to who used the said computer Mr. Suchit Banerjee and his wife told them that they were not much

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computer literate and could not use computer properly and the said computer was used by their son for his education purpose and during the raid one original telephone bill of Calcutta telephone against the land line number against which modem was used, one mobile phone containing the sim having the number which was used in the time of making fake facebook profile in the name of Kinnori Ghosh were seized by the Investigating Officer Sumit Narayan Kundu Inspector of Police.

**xxxii)** On cross-examination of PW-8 he stated it that he was having certificate at the time of investigation to be eligible as O/C Cyber Crime CID West Bengal but he did not submit any certificate to show that he had technical know how in Cyber Crime. He further stated it that any mail sent to O/C Cyber Crime @ CID.Gov.in is treated as official mail. On his cross-examination he failed to state the access point or the domains used in the network in Cyber Crime Cell. He stated it that he was directed to provide technical assistance in the investigation of this case. In his cross-examination he also stated it that they have crossed checked about the cloning of the IP address on the basis of methodology gathered from online firebox. He voluntarily stated it that authentication of the IP address regarding cloning was not considered with great importance as the aforesaid information was received from facebook corporation USA. He also stated it that they have checked if the password of the impugned facebook account was hacked or not. He stated it that the Mat Exhibit-1 is not electronically sealed with hash value and as such there was every chance of the same being tampered. He also stated it that he received an objectionable image from the defacto-complainant

in the course of investigation. He also admitted it that at the relevant time CID did not have enough technological support to deal with this type of cases. He further stated it that he did not have any voice communication with facebook authority. He stated it that he was not the right person to say whether the seized CPU was used by the Investigating Officer before sending it to Central Forensic Science Laboratory.

**xxxiii)** It has been time and again argued by the Ld. Defence Counsel that PW-8 has made most of the investigation by himself as O/C of cyber Crime Cell of West Bengal at the relevant time who is below the rank of inspector.

**xxxiv)** It is also true that it is not possible for a victim to analyse if her case would fail as the investigating authority is below the rank of Inspector in this particular case. It is a natural phenomenon to file a complaint before the appropriate authority regardless of the fact that if there is any irregularity in the post where the complaint is filed as it is not for the victim to ascertain the same and such irregularity shall not vitiate the merits of the case if the same is otherwise proved.

**xxxv)** In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing int the hands of the investigating officer if the investigation is designedly defective. ( *Karnel Singh vs State of M.P.:1995CriLJ4173*).

In *Paras Yadav and Ors. v State of Bihar:1999CriL1122* it was held that if

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the lapse or omission is committed by the investigating agency or because of negligence the prosecution evidence is required to be examined then such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand on the way of evaluating the evidence by the courts; otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.

As was observed in ***Ram Bihari Yadav v. State of Bihar and Ors:***

***1998CrlJ2515*** if primacy is given to such designed or negligent investigation, to the omission or lapses by perfunctory investigation or omissions, the faith and confidence of the people would be shaken not only in the Law enforcing agency but also in the administration of justice. The view as again re-iterated in ***Amar Singh v. Balwinder Singh and Ors, 2003CrlJ1282***. As noted in Amar Singh's case (supra) it would have been certainly better if the fire arms were sent to the forensic test laboratory for comparison. But the report of the ballistic expert would be in the nature of an expert opinion without any conclusiveness attached to it. When the directed testimony of the witnesses corroborated by the medical evidence fully establishes the prosecution version failure or omission of negligence on part of the Investigating Officer cannot affect credibility of the prosecution version.

It has been argued by the Ld. Defence Counsel that there has been an inordinate delay in lodging the FIR.

**xxxvi)** It has been the fact which has been admitted by the defacto-complainant the victim as well as victim's mother that the victim noticed the alleged fake facebook profile in the month of October, 2010, when she came

***Contd.....(32)***

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to visit her parents house from Gujrat where she was studying law, on occasion of Diwali Vacation. However, the FIR has been lodged at Jadavpur P.S. in the year 2011 on 1st March. The Ld. Defence Counsel rightly argued that delay in lodging FIR, particularly in case of electronic evidence is fatal for prosecution case as there is ample people of tampering or degradation of evidence with the lapse of time. However, considering the same it is to be seen if on 01/03/2011 there was any cause of action in filing the FIR as Information Technology Act is a special law guidance by criminal jurisprudence and hence it is specially required to see if the offence was a **continuous offence** and continued on the date of lodging the FIR.

xxxvii) On study of the Exhibited Documents marked as Exhibit-28/1 being one confidential report of BSNL it clearly seen that **I.P. address 117.194.239.76 dated 05/03/2011**. Time is **GMT 14:19:17**, time **1st 19:49:17** was used by Suchit Banerjee with user id. **ct3324629151@bsnl.in**. Exhibit-21 which is a telephone Bill seized from the custody of Suchit Banerjee proves that the same is having telephone no. **24629151**. Thus the LAN connection attached to the telephone number of Suchit Banerjee which is admittedly used by his son as stated by the wife of Suchit Banerjee who deposed as PW-6.

It that be the case then the impugned telephone number matches with the telephone number of the accused person and the same was used on **05/03/2011** along with other dates being **16/02/2011, 13/02/2011, 11/02/2011, 28/01/2011, 16/01/2011, 14/01/2011, 13/01/2011, 30/12/2010 and 10/12/2010** as per Exhibit-28/1 and as such the offence is a continuing offence and hence there is

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*no delay in filing the FIR.*

**xxxviii)** Moreover the victim also notified the occurrence of the alleged incident to CID and other authorised person via email when she noticed the alleged fake facebook profile and she also intimated her mother who inturn intimated her father, who filed the instant case when the offence was continuing . Hence, there is no delay in lodging the FIR.

**xxxix) *The Crime and Chain of Custody.***

What is Chain of Custody?

In a legal context, a chain of custody is the process of gathering evidence-both digital and physical. It involves best practices to ensure that the evidence has been legitimately gathered and protected.

Those involved in chain of custody must do their due diligence when collecting digital evidence, otherwise it might get compromised. Following best practices is incredibly vital because it is easy to erase or manipulate the information. It is recommended that one does not take any chances. Instead, it is better to get into the habit of protecting all the evidence, so that it holds its weight in court.

***Four Steps simplified in computer forensics, digital evidence can indicate the intent in computer or cyber related crimes. The chain of custody process can be done following these four steps:***

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**Collection:** This is the identification, recording and the gathering of information from credible sources to maintain the integrity of the information and evidence that is gathered.

**Examination:** Data is collected in two ways-automated and manual. Examiners will carve out information that will be used during the testimony in court. While this step is going on, the results of the investigation process are recorded and noted.

**Analysis:** The analysis is the overall result of the examination. Investigators use justifiable methods to decrypt useful information to answer the questions that are brought up in a specific case.

**Reporting:** *Lastly, this step is documentation of the examination and analysis. Reporting includes a statement regarding the chain of custody, an explanation of the tools used, and issues and vulnerabilities that were identified.*

x1) As per the FIR which has been lodged for the offence against an unknown miscreant the victim namely Kinnori Ghosh who happens to be the daughter of the defacto-complainant, has been exhibited as a woman of immoral character in a fake facebook profile. It has already been elaborately explained in the previous paragraphs of this judgement, that there has been no delay in filing the FIR as the alleged offence had been a continuous offence on the date of filing the FIR by the defacto-complainant. On perusal of Exhibit-1, being the FIR it is seen that the defacto-complainant has filed the FIR before the

Inspector-in-Charge

of Jadavpur Police station alleging that some unknown miscreant has committed a Cyber Crime with a motive to assassinate the character of his daughter Kinnori Ghosh who used to study in Carmel High School, Kolkata and once she met with an accident on 11/05/2002 during her school days which is present in the said fake profile and he has also prayed that since according to Section 78 of Information Technology Act, the police officer to investigate the Cyber Crime offence should not be below the value of an inspector and hence the FIR to be acted upon like wise.

**xli)** Thus , on consideration of the FIR it is clearly seen that even the defacto-complainant has prayed that an inspector should investigate the instant case as per law. In this case the charge-sheet has been submitted by the Investigating Officer Ashok Chakraborty who deposed as PW-12 and prior to him Investigating Officer Sumit Narayan Kundu has conducted the investigation in this case and also done the seizure. It is seen that Sumit Narayan Kundu who deposed as PW-11 and Ashok Chakraborty who deposed as PW-12 who acted as Investigating Officer in this case are both of the rank of inspector. Although, it is admitted that it is Sub-Inspector Ayan Dutta who has aided in the investigation procedure but from nowhere it is seen that, the formal FIR or the investigations has not been done by a police officer below the rank of an inspector. Thus the investigation procedure is also not vitiated and the argument of the Ld. Defence Counsel to such effect fails.

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All of Exhibit-10 to Exhibit-16 which is report of Central Forensic Science Laboratory clearly stated it that Exhibit-AHDD1 image shows that the name of Kinnori Ghosh has been used on various occasion in the said url and the same is copied from the original and hence the procedure of CEDAC has been followed . Exhibit-15 is the morphed image of the victim which bears the signature and seal of Junior Scientific Officer as such the argument of the Ld. Defence Counsel regarding the source of obtaining such image from the victim fails since the same is categorically signed and sealed by Central Forensic Scientific Laboratory and marked as Exhibit. Thus it is apparent on the face of the record that not only morphed picture of the victim girl Kinnori Ghosh was used in the offence but several chats were also initiated from the end of the aforesaid fake facebook profile on various dates to witness the occurrence of the said crime.

**xlii)** Exhibit-38 lays down a motive behind such an offence by the accused person. The facts and evidence of the present case are perfect blend of technical and conventional evidence. Going through the factual aspects, legal aspects, mixed aspects of facts and law and from the techno-legal perspective, on perusal of every evidences, prosecution has proved the case beyond reasonable doubt taking all modern techno-legal edifice and all the penal sections under which the charge has been framed, have been proved in toto with all its ingredients under the Information Technology Act (As Amended), 2008.

**xliii)** In the present context one can find the chain of evidence in the following way

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1) The investigating agency at the time of enquiry by way of PW-8 sent request to the Facebook authority with the URL of the fake Facebook account for creation and login IP address which subsequently the Facebook authority provided and wherein it was found that mobile carrying number 9903740723 by which the said fake Facebook account in the name of victim being PW-3 was created (as per the PW-8).

2) Then after receiving the IP address from the Facebook authority the IPs were verified and as it was found to be of BSNL, then request was sent to the BSNL authority to provide the login details. Subsequently the BSNL authority sent the same and it was found from therein that the subscriber details were in the name of Suchit Banerjee that the BSNL has allocated as the offending IPs to the subscriber who is the father of the accused person namely Suchit Banerjee.

3) Then the investigating agency on 1.9.2011 raided the house of the accused person relying on the data provided by BSNL and reaching at their house it was found that the broadband internet connection in the computer found therein was used by the Suddhochit Banerjee i.e. the present accused person for educational purpose and he was arrested thereafter and the CPU of the computer carrying the suspect hard disc, the modem, one telephone broadband connection bill bearing number 033-24629151 was issued by BSNL and one mobile phone carrying the number 9903740723 were seized therefrom.

iv. Later on the investigating officer sent the modem and CPU carrying the Hard disc to Central Forensic Scientific Laboratory expert with some queries

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and when the PW-4 was being examined the Court also directed Central Forensic Scientific Laboratory to provide information and data on some additional queries and relying all the extracted data found in the hard disc of the accused or used by the accused the name of the PW-3, the URL of the fake Facebook account etc. were found and also the existence of photographs which were in the fake Facebook account in the name of PW-3 were also available in the hard disc which the accused person was using.

**xliv) Motive established** – The revenge has been established by proving that during PC period the accused person has given a statement before the investigating officer which led to the information or the fact of motive or reason for which the accused had made the fake Facebook account in the name of PW-3 and the reason is PW-3 was a school friend of PW-9 whereas PW-9 had intimate relationship with accused person. Incidentally, PW-3 insulted PW-9 on different context and PW-9 became demoralized and after seeing the plight of his girlfriend accused person, accused person harboured a grudge against PW-3. That was the reason for which the fake Facebook account was created to defame and malign PW-3 with all sorts of offensive data and also mentioned detail information of PW-3 after collecting the same probably from PW-9.(Exhibit 38 and other supporting evidence).

**1) Subscriber details relevant to the case** - In the present case, it was proved by the electronic records collected from Facebook authority and as per the evidence of PW-8 the offensive fake Facebook account was registered through a mobile number being number 9903740723 which was

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in the name of Suchit Banerjee that is the PW- 7 herein being the father of the accused person. Further, the fake Facebook account was repeatedly logged in through the broadband connection number 033-24629151 which was also in the name of Suchit Banerjee that is. the PW- 7 herein being the father of the accused person. The most shocking incident is that in statement u/s 313 Cr.P.C. the accused has completely disown both the connections which are elaborately proved to be in his father's name and used by him at the relevant point of time.

**2) Opportunity to commit the crime** –In the present case the accused person got computer and internet connections in his house and which was used in committing the crime and again the information used in the said offensive fake Facebook account was available to him from Ankita Dey being the PW-9 herein who was also the school friend of PW-3 being the victim girl. During evidence the above fact was proved crystal clear.

**3) Irregularity in investigation** - It is true that section 78 of Information Technology Act provides that the offence under this act will be investigated by an officer to the rank of inspector and above. In the present case, in the cross examination of PW-8, 11 and 12, the defence desperately tried to prove that the investigation was done by PW-8 and PW – 11 and 12 proceeded as per instructions of PW-8. The defence tried to prove that as because the PW-8 at that moment of time was in the rank of Sub-Inspector of Police, so he could not or should not have investigated the present case which was under Information Technology

4) Act. But every effort of the defence proved to be futile in the context of settled principle of law which was found in *Jodha Khoda Rabari v. State of Gujarat, 1992 SCC Online Guj279 ; 1992 Cri LJ 3298 ; 1992 CriLR (Guj) 282 at page 3368 -*  
*“139.In the present case, though the learned Judicial Magistrate First Class has committed some illegality in remanding Jashubha.....Even if it was illegal custody, the evidence about discovery which is otherwise relevant, would not be tainted because of the illegality or irregularity and could not be shut out on that score.”*

xlv) In the present case the probative value of the relevant and admissible evidences will always over power or supersede any latches in the process of investigation and it can safely be observed comparing to that the minor irregularities or the present minor defects in the investigation, if any, will never vitiate or come in the way of the very core of evidence which is enjoying the all-important probative-value. **It is also pertinent to mention that the role of PW-8 was of an enquiry officer and not of an investigating officer. It is further pertinent to mentioned that the enquiry whatever be made by PW-8 was before the control of the investigation was taken over by the CID, West Bengal. Hence, technically speaking the evidence of PW-8, who has a very important role in this case and who has provided the basis of electronic evidence on which the prosecution case is mostly build upon, can never be discarded on a flimsy ground as to his role in the**



**entire investigation.** It is a fact that the input obtained in the enquiry prior to the case was taken control over by the CID, West Bengal has shown a guideline to the investigation made by CID, West Bengal

from 01.09.2011. Following observations of Hon'ble Court are important in this respect *(2004)3 SCC 654;2004 SCC CRI 851 Not fatal to prosecution where ocular testimony is found credible and cogent-court has to be circumspect while evaluating the evidence in a case of such type. Thus accused cannot be acquitted solely on account of defect in investigation.*

*AIR 2010 SC 2119 Defective investigation effect held criminal justice should not be made a casualty for wrongs committed in investigation.*

*State of Madhya pradesh vs Chamru, 2007 12 SCC 423 Defective investigation cannot be a ground to discard credible evidence.*

**xlvi) Ingredients of other offences found during the trial-** On scanning the entire evidence that is both ocular and documentary evidence it is crystal clear.

**Special Knowledge: 106 of Indian Evidence Act:**

In the present case when the url to IP address and IP address to IP log and IP log to subscriber details landed up in the house of the accused person, wherein the accused person was only conversant with computer and was using internet connection and finally when the HardDisk obtained from the seized CPU provides details of name of victim and url of the crucial fake Facebook account and the image/picture used in

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the said fake facebook account, it is then the duty of the defence to explain his special knowledge to prove what he was doing with that fake facebook account. But in this case the statement of accused under section 313 Cr.P.C was absolute denial of the corroborated fact that is truth. In **RaviralaLaxmaiah vs. State of Andhrapradesh 2013(3) SCC (Cri), 911(2013)9 SCC 283, Hon'ble Court observed Circumstantial evidence – failure to explain incriminating circumstances – is an additional link to chain of circumstances – false explanation or no explanation offered by accused to incriminating circumstances put to him – when accused is last seen with deceased in his house, accused is duty bound to explain circumstances under which deceased died – failure to explain or false explanation would create a strong suspicion about guilt of accused.**

**xlvi)** PW-9, Ankita Dey as discussed earlier has turned hostile but she stated it that she knows the accused person and identified him on dock and also admitted it that said Suddhachit Banerjee is a very good friend of the witness.

**xlviii)** One Manoj Kumar Barik deposed as PW-10 and he stated it that he does not know the victim or the accused person and has admitted that CID Cyber Cell interrogated him in connection with this case as in the year 2010 he had one land line number bearing no. 03324618779 and cell phone no. 9433559790 which were seized by CID Cyber Cell. On perusal of the exhibited documents being Exhibit-28/1 it is seen that said Manoj Kumar Barik has also used the dynamic IP address which was used by accused

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Suddhachit Banerjee in the present case but the time zone in which the said IP address was used did not match with the time in which the accused person operated the said profile and chat was initiated from the impugned facebook profile as such there remains no cloud of suspect on the said Manoj Kumar Barik regarding the commission of the aforesaid crime.

**xlix)** PW-11 Sumit Narayan Kundu and PW-12 Ashok Chakraborty were the Investigating Officers in this case. PW-11 has initiated the investigation, conducted raid at the house of accused person and thereafter PW-12 filed the charge sheet in this case.

**i)** Since it has already been discussed that the telephone number and the mobile number which were used in the instant case stood in the name of Suchit Banerjee being the father of the accused person by deposing on dock as PW-5 and PW-6. The parents of the accused person admitted it that the aforesaid computer and the internet connection were used by their son Suddhachit Banerjee for his study purpose. **Exhibit-33** is the Zimmanama Bond on which the mobile phone seized by C.I.D. was released in favour of the father of the accused person being the owner of the said device.

**ii)** In order to prove a case of Cyber Crime attracting the provisions of Section **66C/66D/67A** of the Information Technology Act that the chain of custody of the Electronic Evidence along with the steps to traceability has to be proved beyond reasonable doubt.

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**lii)** In the instant case, the victim girl namely Kinnori Ghosh has logged a complaint before C.I.D., Cyber Crime Department by E-Mail and thereafter C.I.D. initiated the investigation based on such E-mail of the victim in which it was alleged that some unknown person has created a fake facebook account without her knowledge, in her name in which her character has been maligned in various manner. **Exhibit-22** is the downloaded copy of such E-mail sent by victim, Kinnori Ghosh to O/C Cyber Crime Investigation Cell.

**liii)** Thereafter, an E-mail was sent to Facebook Inc.California by O/C Cyber Crime, West Bengal, the copy of which has been marked as **Exhibit-24** enquiring the fact about the URL complained by Kinnori Ghosh in her E-mails and in turn Facebook sent a reply by e-mailing a link which was valid for sometime and the downloaded copy of the same has been marked as **Exhibit-26** in which it was provided that the Facebook Profile regarding which the complaint was registered was opened from the phone number **919903740723** which was seized from the house of the accused person and admittedly used by the accused person only for his study purpose.

**liv)** Since chain of traceability has already been established and it has also been discussed at length in the previous paragraphs of this Judgement that faulty investigation will not be fatal for a prosecution case which has otherwise been proved without reasonable doubt. On the instant case, it is already proved that the seized mobile phone which was used in opening the alleged fake Facebook Profile was operated by the accused Suddhachit Banerjee as per certificate of Central Forensic Research Laboratory being

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expert evidence and it has nowhere been stated by the expert that the said exhibit was not electronically sealed or contained the hash value to be matched with the hash value created by Central Forensic Research Laboratory and nowhere from the certificate of the Central Forensic Research Laboratory it is seen that such seized articles were tampered or previously used after the seizure and prior to sending the same to the Central Forensic Research Laboratory for expert opinion.

**lv)** The path leading to traceability of the offence has been clearly established by the prosecution and the exhibited documents stand as pillar to support the evidence of the prosecution to lead to a conclusion that the accused person namely Sudhhojit Banerjee was propelled to commit the alleged crime for the sake of some rivalry among the victim girl, the accused person and their friend Ankita Dey. Thereafter the FIR has been lodged against unknown miscreant by the father of the victim girl namely, Kishor Brata Ghosh and investigation has been conducted by CID Cyber Crime Branch, Kolkata and Jadavapur P.S. and charge-sheet was submitted against the accused person since in the investigation it has cropped up by CID Cyber Crime Branch by sending E-mail to Facebook authorities at California that the mobile number by which the alleged fake facebook profile was opened stood in the name of the father of the accused person. The said mobile has also been seized from the house of the accused person and admittedly the internet connection was used by the accused person himself as admitted by his parents who deposed as PW-5 and PW-6 respectively even after turning hostile.

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**lvi)** On perusal of the report of Forensic Expert it is evident that the name of Kinnori Ghosh cropped up several times in said Url and several other derogatory words were also used in the description portion of the said fake

facebook profile. The words that was used in the said profile are clearly maligned in nature and disrupting the chastity and morality of the victim girl. Since it is already been proved that the alleged Cyber Crime has been committed from the mobile phone of the father of the accused person which has been used by the accused person himself admittedly and it is definitely the case that the Cyber Crime has been committed in which the character of the victim girl namely, Kinnori Ghosh has been assassinated.

**lvii)** The provisions related to the documentary evidence are provided under **Chapter-V** of the **Indian Evidence Act, 1872. Section 3** of the Act defines the term "**document**". Any matter which is expressed or described on any substance by means of letters, figures or remarks or by more than one means and which can be used for regarding the matter is considered as a "document".

**lviii)** Generally, the most common document which we have to deal with is described by letters. The documents are written in any language of communication such as Hindi, English, Urdu etc.

The documents produced before the Court as evidence are the documentary evidence and there must primary or secondary evidence to prove the contents of the documents. Primary evidence has been defined under **Section 62 of the**

*Indian Evidence Act* and it means the original document when itself produced before the court for the inspection.

**lix) Section 91 of the Indian Evidence Act, 1872** lays down the provision that when evidence related to contracts, grants and other depositions of the property is reduced as a document, then no evidence is required to be given for proof of those matters except the document itself. In the cases where the secondary evidence is admissible then such secondary evidence is admissible.

**lx)** There are certain kinds of contracts, grants and other depositions which can be created orally and they do not required any document.

**lxi)** In the instant case although investigation has been faulty but Court cannot disbelief the documentary evidence presented before it, being the forensic expert certificate regarding the fact that the name of 'Kinnori Ghosh' has been seen at various times in the alleged fake facebook profile which has been opened by the accused person namely Suddhachit Banerjee.

**lxii)** It is a settled principle of law that if documentary evidence is proved then oral evidence loses its importance. In this case the investigation even if faulty and the evidence of the hostile witnesses falls way back in the path of reality that even the experts being forensic Scientific Officer clearly laid down that 'Kinnori Ghosh' name was repeatedly used by the accused person in the alleged fake facebook profile.

**lxiii)** It is the fundamental duty of the Court to ascertain the truth and do justice on the basis of truth. The law in this regard is well settled. Truth

should be the guiding star in the entire judicial process. Dispensation of justice, based on truth, is an essential feature in the justice delivery system. People will have faith in Courts when truth alone triumphs. Justice based on truth would establish peace in the society.

**lxiv)** *Krishna Iyer J. in Jasraj Inder Singh v. Hemraj Multanchand, (1977)*

*2 SCC 155* described truth and justice as under:

Truth, like song, is whole, and half-truth can be noise! justice is truth, is beauty and the strategy of healing injustice is discovery of the whole truth and harmonizing human relations. Law's finest hour is not in meditating on abstractions but in being the delivery agent of full fairness.

**lxv)** The derivation is justified by the need to remind ourselves that the grammar of justice according to law is not little litigative solution of isolated problems but resolving the conflict in its wider bearing. *In Union Carbide Corporation v. Union of India, (1989) 3 SCC 38*, the Supreme Court described Justice and truth to mean the same. The observations of the Supreme Court are as under:

when one speaks of justice and truth, these words mean the same thing to all men whose judgement is uncommitted. Of Truth and Justice, Anatole France said:

Truth passes within herself a penetrating force unknown alike to error and



falsehood. I say truth and you must understand my meaning. For the beautiful words Truth and Justice need not be defined in order to be understood in their true sense. They bear within them a shining beauty and a heavenly light. I firmly believe in the triumph of truth and justice. That is what upholds me in times of trial. ***In Mohanlal Shamji Soni v. Union of India, 1991 Supp(1) SCC 271***, the Supreme Court observed that the presiding officer of a Court should not simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost and that there is a legal duty of his own, independent of the parties, to take an active role in the proceedings in finding the truth and administering justice. ***In Chandra Shashi v. Anil Kumar Verma, (1995)1 SCC 421***, the Supreme Court observed that to enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, pre-variation and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail. People would have faith in Courts when they would find that truth alone triumphs in Courts.

***In A.S. Narayana Deekshitule v. State of A.P., (1996) 9 SCC 548***, the Supreme Court observed that from the ancient times, the constitutional system depends on the foundation of truth. The Supreme Court referred to Upanishads, Valmiki Ramayana and Rig Veda.

***In Mohan Singh v. State of M.P., (1999) 2 SCC 428*** the Supreme Court held

***Contd.....(50)***

that effort should be made to find the truth; this is the very object for which Courts are created. To search it out, the Court has to remove chaff from the grain. It has to disperse the suspicious, cloud and dust out the smear of dust as all these things clog the very truth. So long chaff, cloud and dust remains, the criminals are clothed with this protective layer to receive the benefit of doubt. So it is a solemn duty of the Courts, not to merely conclude and leave the case the moment suspicions are created. It is onerous duty of the Court, within permissible limit to find out the truth. It means, on one hand no innocent man should be punished but on the other hand to see no person committing an offence should be set free. There is no mathematical formula through which the truthfulness of a prosecution or a defence case could be determined. It would depend on the evidence of each case including the manner of deposition and his demeanors, clarity, corroboration of witnesses and overall, the conscience of a judge evoked by the evidence on record. So Courts have to proceed further and make genuine efforts within judicial sphere to search out the truth and not stop at the threshold of creation of doubt to confer benefit of doubt.

***In Zahira Habibullah Sheikh v. State of Gujarat,(2006) 3 SCC 374***, the Supreme Court observed that right from the inception of the Judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice.

***In Himanshu Singh Sabharwal v. State of Madhya Pradesh, (2008) 3 SCC 602***, the Supreme Court held that the trial should be a search for the truth and not a bout over technicalities.

**lxvi)** On the study of the present case following principles emerge.

**a)** it is the bounden duty of the Court to upload the truth and do justice.

**b)** Every litigant is to state truth before the court of law. Dishonest unscrupulous litigants have no place in law courts.

**c)** It is the bounden obligation of the Court not to give any unjust and /or undeserved benefit or advantage obtained by abusing the judicial process.

The primary principle governing criminal jurisprudence is “All accused persons are innocent and Prosecution has to prove the guilt of the accused beyond all reasonable doubts.”

As reasonability has not been defined in any code in order to bring home the charges against the accused, it has to be proved by the Prosecution that **NO OTHER PERSON THAN THE ACCUSED HAS COMMITTED SUCH CRIME.**

It is also cardinal principle of law that no innocent should be punished and the benefit of doubt always goes in favour of the accused.

Again, the cardinal principle of law states that “Behind all crimes there is always a guilty mind that gives driving force for commission of crime. “ This principle is based upon a legal maxim “*ACTUS NON FACIT REUM NISI MENS SIT REA*” which means an act does not make anyone guilty unless there is a criminal intent or a guilty mind and the Prosecution must prove the motive behind the crime for holding the accused as guilty as submitted by Ld. Deefence Counsel .

**lxvii)** However, in this case accused person cannot get the benefit of faulty investigation since it is otherwise proved by the means of cogent documentary testimony being expert evidence that it is the accused person who has committed the heinous crime of defaming a woman and make mockery of her by describing her as a woman of ill repute and being so vindictive that he even initiated chats from the fake facebook profile stealing the identity of the victim Kinnori Ghosh.

**lxviii)** The accused person has committed all the offences charged against him being that of identity theft (Section 66C of information Technology Act),, cheating by personation using computer resource. (Section 66D of Information Technology Act), Publishing sexually explicit act in electronic form (Section. 67A of Information Technology Act). Since he has stolen the identity of victim Kinnori Ghosh in most vulnerable manner and using his computer he has published sexually explicit material in electronic media in the fake facebook profile opened by him impersonating the victim Kinnori Ghosh.

**lxix)** In the present scenario, the violence and the increasing crimes against women is witnessed by everyone across the world in some or the other manner. It indicates the enormity and pensiveness of the monstrosity perpetrated against women in recent years. The global crusade for the decimation of violence against women is a proof to this fact. The changes in the living standards, lifestyle, imbalance in the economic growth, changes in social ethos and meager concern for the moral values contribute to a vicious outlook towards women due to which there is multiplication in crimes against

women. Moreover, such incidents are a matter of grave concern and its structure is absolutely necessary so that the women of India could live with respect, honour, dignity, liberty and peace in an atmosphere free from atrocities, denigration and heinous crimes.

**lxx)** There are many legal provisions which punish the culprits committing offences against women. The Indian Penal Code though, provides provisions for women as a victim of many crimes such as murder, robbery, theft, etc. But there are certain crimes which are diametrically characterised against the women known as 'Offences Against Women'. With the need of the hour, many new socio-economic offences have been enacted accompanied by various amendments in the existing laws with an objective to combat these crimes effectually.

**lxxi)** Social media crimes are increasing day by day. With the emerging virtual world of internet several crimes have become predominant including creation of fake profiles, posting offensive contents including morphed photographs on the fake profile.

These types of crimes should be immediately curbed out of the society and these types of men like the present accused person should be restrained from committing social crimes like this just for the sake of taking revenge of primitive nature and demoralising the confidence of the victim girl of good social reputation permanently. These types of social crimes if go unpunished just for some trivial reason being faulty investigation shall be shameful and moreover, the expert evidence and the chain of custody of the evidence in this

case has been well proved by the prosecution beyond reasonable doubts to combat the irregularities in investigation procedure.

**lxxii)** Therefore in the present case the creation of the fake facebook profile by the accused person Suddhachit Banerjee should not go unpunished as he not only expressed his vengeance in most derogatory manner by defaming the victim girl publicly but has also committed a social crime against woman disregarding her character, sentiments, emotions and effecting her womanhood permanently .

Hence , it is

**ORDERED**

**That the accused person namely Suddhachit Banerjee is found guilty of the offence under Section 66C/66D/67A of Information Technology Act and he is convicted under Section 248 (2) of Cr. P.C.**

**The bail bond on behalf of the accused person stands cancelled.**

**D/C**

**SD/-**

**Dalia Bhattacharya  
Judicial Magistrate.  
2nd Court, Alipore**

**SD/-**

**Dalia Bhattacharya  
Judicial Magistrate.  
2nd Court, Alipore**