

Ude Singh vs The State Of Haryana on 25 July, 2019

Equivalent citations: AIR 2019 SUPREME COURT 4570, AIR ONLINE 2019 SC 713, (2019) 109 ALLCRIC 991, (2019) 204 ALLINDCAS 184, (2019) 3 ALLCRILR 633, (2019) 4 CRIMES 382, (2019) 75 OCR 898, (2019) 9 SCALE 831, (2020) 1 ALD(CRL) 78, AIR 2020 SC(CRI) 18

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Bench: A.M. Khanwilkar, Dinesh Maheshwari

REPORTAB

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 233 OF 2010

UDE SINGH & ORS.

VS

....APPELLANT(S)

STATE OF HARYANA

....RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

1. This appeal by special leave is directed against the judgment and order dated 05.05.2008 in Criminal Appeal No. 964-SB of 1997 whereby, the High Court of Punjab and Haryana at Chandigarh, while upholding the conviction of accused-appellants for the offence under Section 306 read with Section 34 of the Indian Penal Code ('IPC'), has modified the sentence of four years' rigorous imprisonment and fine of Rs. 300/- with default stipulation, as awarded by the Additional Sessions Judge, Rewari in Sessions Case No. 23 of 1997, to that of rigorous imprisonment for two and half years.

2. The relevant background aspects of the matter could be noticed, in brief, as follows:

2.1 The appellants Ude Singh, Manoj Kumar and Daulat Ram (accused Nos. 2 to 4) and one Hem Karan alias Hemla (accused No. 1- since deceased) were tried for the offence under Section 306/34 IPC on the allegations that they had abetted commission of suicide by the daughter of the complainant Pohap Singh (PW-1). The

parties involved in this matter are closely related to each other. The accused Nos. 1 and 2 had been brothers and the complainant is their cousin. The accused Nos. 3 and 4 Manoj and Daulat Ram are the sons of accused No. 2 Ude Singh. The witness Smt. Krishna (PW-11) is the mother of deceased girl whereas another witness Jai Narain (PW-2) is also the cousin of the complainant and the accused Nos. 1 and 2. The parties lived in the same village Shahadatnagar (Haryana) and in the neighbourhood. However, the relations of parties were too strained and they were engaged in several litigations against each other, including the complaint relating to a hurt case, as lodged by PW-11 Smt. Krishna(wife of the present complainant) against Hem Karan alias Hemla and Ude Singh that was pending trial at the relevant time.

2.2 The case of prosecution in the present matter has been that the accused persons, Hem Karan alias Hemla, Ude Singh, Manoj and Daulat Ram, were taunting the unmarried daughter (the deceased girl) of the complainant by addressing her as "wife", "Chachi" (aunt) and "Bohoria"

(younger brother's wife); and the deceased girl had been complaining to her family about the indecent behaviour of the accused. It was alleged that on 15.04.1996, when the wife of complainant and other witnesses returned to the village after completing their evidence in the criminal case against Hem Karan and Ude Singh, Hem Karan caught hold of the daughter of the complainant; dragged her into his house; pushed her; and verbally abused her and her family members. On returning home, daughter of the complainant narrated this incident to her mother and stated that she was unable to tolerate such continuous insults. It was also alleged that on the advice of village elders, no report of this incident was made, as it concerned the future and honour of an unmarried girl; however, the accused persons continued to taunt the girl on daily basis and, at all the times, the girl was only advised by her family to keep quiet.

2.3. It was further alleged that on 05.05.1996, on sighting the daughter of the complainant, who was returning after throwing garbage, Ude Singh said, "see my Bohoria is coming"; Daulat Ram and Manoj said, "she is our Chachi"; and Hem Karan alias Hemla exclaimed, "she is my wife". Having heard all these taunts, daughter of the complainant became very upset and entered into altercation with the men. This incident was allegedly witnessed by Jai Narain (PW-2). The victim girl once again complained to her mother and the complainant's elder brother Raj Kumar about the incident and while crying, stated that she had no right to live and would end her life as and when she would get the opportunity to do so. Upon hearing this, the wife and the elder brother of the complainant tried to pacify the girl and also told her that they would inform the complainant (who was posted as Head Constable at Police Station Beri, District Rohtak). They also advised her not to be troubled by such taunts as the prestige of the family was in her hands and she was to be married soon. However, the very next day, i.e., on 06.05.1996 at about 9:00 a.m., daughter of the complainant was found dead, hanging by her neck. Her mother was the first to see her dead. The complainant, who was on duty, was informed through his nephew about his daughter's demise. 2.4. After noticing the unnatural death of his daughter, the complainant lodged the report and made his statement whereupon FIR No. 93 dated 06.05.1996 was registered at Police Station, Jatusana; investigation was carried out; and ultimately, the accused persons were charge-sheeted for the offence under

Section 306 read with Section 34 IPC.

3. In trial, the prosecution examined several witnesses in support of its case that the accused persons were guilty of abetment of suicide by the daughter of the complainant. In view of the questions involved in this appeal, we may briefly take note of the statements of relevant witnesses, being PW-1 Pohap Singh (the complainant- father of the deceased); PW-2 Jai Narain (brother of the complainant); and PW-11 Smt. Krishna (wife of the complainant – mother of the deceased).

3.1. PW-1 Pohap Singh stated that on a previous occasion, Hem Karan and others had assaulted his wife and criminal proceedings were pending in that regard. He also narrated about the incidents that had allegedly taken place on 15.04.1996 and on 05.05.1996. In his cross-examination, the complainant admitted the relationship of parties; and also admitted that his deceased daughter, 18 years of age, could not qualify her 10 th standard examination and had dropped her studies. The complainant PW-1 stated further that he was aware of the insults his daughter had faced at the hands of accused; that he had not witnessed the incident in question himself but was made aware of the same by his wife, his brother and Jai Narain; and that his nephew Naresh had informed him about the demise of his daughter. In his cross-examination, the complainant further stated that no panchayat was ever convened to resolve the issue of harassment of his daughter as it was believed that such a step would eventually affect the marriage prospects of the girl. The complainant also admitted a previous land dispute with the accused that had commenced in the year 1988 and was ultimately compromised. He also admitted that a case was registered by Hem Karan under Section 307 IPC against him wherein his brother Raj Kumar and the witness Jai Narain were also named as accused.

3.2. PW-2 Jai Narain testified to the occurrence of 05.05.1996 as also the conduct and behaviour of the accused persons. This witness specifically stated that he was standing at a plot with Ram Kumar and Virender when daughter of the complainant came there to throw garbage and when she was going back, the utterances were made by the accused with Hem Karan calling her as his wife; Ude Singh calling her as Bohoria and Daulat and Manoj calling her as Chachi. This witness also stated that the daughter of the complainant started crying and also rebuked the accused for their behaviour; and that she was consoled by him and other persons and they walked down with her to the house and left her there. Even while disputing some part of his statement made during investigation, this witness stated that: "All the four accused are rouges and as such we could not dare to rebuff or rebuke them for their indecent behaviour. It is incorrect that all the four accused are decent person." 3.3. PW-11 Krishna, wife of the complainant and mother of the deceased girl stated that even during the pendency of land dispute between the parties, the deceased was teased by the accused and she was taunted with the expressions like "Chachi" and "Bohoria" etc.; that even during that time, none of the elders of the panchayat controlled the behaviour of the accused; and that the accused were eve-teasers and might have victimised other girls of the village as well. She also deposed that she had brought the repeated indecent behaviour with her daughter to the notice of the wives of the accused persons. 3.3.1. PW-11 further deposed that 3 years prior to the incident, Hem Karan had inflicted head injury on her by using a gandasa and that he was facing trial before the Court of Judicial Magistrate, Rewari and, therefore, her daughter was targeted regularly by the accused persons. She also deposed that on the date of evidence in the hurt case i.e., on 15.04.1996,

Hem Karan dragged her daughter into his house and insulted her but, in order to protect the honour of unmarried girl, the male members of the family were against reporting the matter to the police.

3.3.2. PW-11 also deposed that on 05.05.1996, when her daughter had gone to throw garbage, she was intercepted by the accused and was again teased by all of them. PW-11 stated that her daughter was exhausted and disgusted of all the taunts and remarks she had to bear; and throughout the night, she kept on weeping and did not have even a wink of sleep. The witness deposed that on 06.05.1996, that is the very next day, her daughter ended her life by hanging as a result of continuous indecent behaviour of accused towards her; and she was the one who found her daughter hanging by the neck. PW-11 also stated that her daughter was previously engaged but the engagement was called off six months before the incident.

3.3.3. For their relevance, the material parts of the deposition of PW-11 are extracted as under:

" ...On 5.5.96 Meena had gone to dung garbage on a Kurhi in the plot at about 5.30 p.m. As she returned from the plot, she was intercepted by accused Hem Karan, Daulat, Manoj and Udey Singh. Daulat and Manoj teased her by addressing her as 'Chachi'. Uday Singh accused addressed her as 'Bohoria' (younger brother's wife). Accused Hemla alias Hem Karan addressed her as 'wife'. She then returned to her house and wept bitterly in my presence. She told me that Virender, Jai Narain and Ram Kumar had seen the untoward behavior of all the accused. Meena had told me that she was totally exhausted and disgusted from all the taunts and remarks given occasionally to her by the accused and that she would end her life.

On 6.5.96 my daughter ended her life by hanging as a result of the continuous indecent behavior of the accused towards her...."

xxx Cross-examination "...Approximately 8/9 years back there was dispute in regards to landed property between our family and the accused. However, it was settled. Even during that land dispute, the accused used to tease and taunt her. They used to address Meena in these very words like Chachi and Bohdia etc. even then. It had become an every day affair with the accused. The entire village community knew about the indecent utterances towards Meena. We always tried to overlook the matter as the honour of an unmarried girl was involved. No elected member of the panchayat of the village or any other respectable of the society rebuked the accused against their behavior as they are all anti-social elements and no respectable wants to take cudgels with them. I would not know if more cases are pending against the accused other than the two cases involving us. Volunteered they are eve-teasers and have borrowed money from different people and quite possible that they have many more cases pertaining to these occurrence pending with the police or in the courts but I have no definite information. I would not know the names of the girls or their parents who have been the targets of the behavior of the accused. May be they are involving the teasing of 10/11 girls in the village. We may have told the police about those incidents.

It is incorrect that I am deposing falsely against the accused or that they have never been involved in any illegal activity in the village.

The accused and my husband are cousins. The wives of Hem Karan and Uday are my 'Jethani and Devrani' (Sisters-in-law). I had complained to those ladies about the misbehavior of the accused. I had complained to them repeatedly. I would not know the result of my complaints to them. Our men folk had also brought the incident to the notice of our neighbours and Mohalla-wala.

My daughter had told me that she would end her life as she was fed up of the indecent behavior of the accused towards her and also because of our inaction against them. She wanted us to report the matter to the police for action against the accused."

xxx xxx xxx "My daughter had returned home all alone after the dragging incident on 5.5.96. It is incorrect that accused Manoj and Daulat was not present in the village on 5.5.96 or that they were in the native village of their maternal uncle called Jainabad. I had not sent any person to call my husband after Meena narrated all the happenings of 5.5.96 to me. Meena had slept besides me on that night. She kept on weeping throughout the night and did not have a pill of sleep. In the morning at about 8.00 a.m. I had given her a piece of bread (Roti) and a cup of tea. I had then gone to place fodder before the bullocks. Even at that time she was mentally disturbed. I returned to the house after just 10 minutes and found Meena hanging by rope. I had gone at about 9.00 a.m. to look after the bullock and had returned in 10 minutes time. I had not gone to the fields (Khet) on the day but I had gone to the plot in the Abadi where the bullocks were tied. I had risen on that day at about 6.00 a.m. It is incorrect that the entire story is a pure concoction with nothing true in it. It is incorrect that my daughter had ended her life or she was killed by my man on the night intervening 5/6 May, 1996. It is also incorrect that my daughter may have died even at about 4.20 p.m. on 5.5.96. It is incorrect that a totally false story was coined by my husband Pohap Singh, a police man, and all the accused were falsely implicated in this case."

4. In defence, the accused examined 11 witnesses, essentially to suggest that on 04.05.1996, accused Nos. 3 and 4, Manoj and Daulat, had visited Jainabad and were falsely implicated in this case; and in this connection, an application dated 05.06.1996 was sent to DIG Rohtak. The witnesses also suggested that daughter of the complainant was under depression after her engagement got broken; and she committed suicide for this reason.

5. On appreciation of evidence, the Trial Court, in its judgment and order dated 28.11.1997, observed that minor discrepancies in the statements of witnesses could not be the reason to discard the case of the prosecution nor could the case of the prosecution be said to be doubtful for their failure to examine all the witnesses. The Trial Court rejected the suggestions made by way of defence evidence and found that the case of the prosecution was proved against all the accused; and that the acts and deeds of the accused had been that of abetment of suicide. Accordingly, the accused were held guilty of the offence punishable under Section 306 read with Section 34 IPC and each one was awarded the punishment of rigorous imprisonment for a period of four years and fine of Rs. 300/- with default stipulations.

6. In appeal by the accused, the High Court of Punjab and Haryana observed that the incident of 05.05.1996 was not a solitary one; that the incident that had occurred on 15.04.1996 was enough to malign the village girl; that the deceased was teased and harassed by the accused persons on several

occasions; and that there was a consistent attempt on the part of the accused to hurt the girl of marriageable age. The High Court, inter alia, observed and held as under:

"In the present case, there is not a solitary instance of 5 th May, 1996 which resulted into commission of suicide on 6 th May, 1996, but prior thereto also, witnesses have stated that accused were eve-teasing Meena. On 15th April, 1996 also, when Krishana had returned from Court, Meena was caught hold of one and she was dragged. Therefore in the whole village, where great value is attached to the honour of the girl, where girls are kept inside houses and are not allowed to mingle in the society, the incident dated 15 th April, 1996 was sufficient to malign a girl. Furthermore, each day attempt was made by the accused to browbeat, humiliate and insult the girl only to assert that registration of a criminal case at the instance of her mother had no effect, and they are superior in muscle power and they intended to belittle the girl in the village. In our society, to assert 'might is right' is not acceptable. Chain of circumstances reveal that there was a consistent attempt on the part of the accused to hurt the girl of marriageable age. Therefore, abetment on their part to cause suicide of Meena is complete and they are held guilty of offence under Section 306 IPC...."

6.1. With the findings aforesaid, the High Court upheld the order of conviction but reduced the sentence to that of imprisonment for a period of two and half years on the ground that the accused had already faced 12 years of protracted trial.

7. It may be pointed out that on 22.07.2009, while entertaining the petition for Special Leave to Appeal in this matter and while issuing notice to the respondent, this Court also issued notice to the petitioners-appellants as to why, in the event, if sufficient evidence is found acceptable, they be not suitably punished under appropriate provisions of the Indian Penal Code, even if they may not be held guilty for commission of offence under Section 306 of the Indian Penal Code. We shall examine hereafter a little later the questions as to whether the accused are guilty of the acts and utterances attributed for them; and if so, they are liable for the offence of abetment of suicide or if they are guilty of any other offence under the Indian Penal Code.

8. Learned counsel for the appellant-accused has strenuously argued that there is want of direct and cogent proof of the fact that the accused abetted the suicide in question; that there is no evidence to show that the deceased ended her life for the words or actions attributed to the accused; and that there are no eye-witnesses to the incident and the depositions of the witnesses are all nothing but hearsay. Learned counsel would submit that the deceased was obviously depressed on account of dropping out of her studies as she had failed to clear her 10th standard examination as also on account of her engagement having been called off a few months prior to the incident and these being the real causes of her committing suicide, the appellants cannot be held responsible therefor. The learned counsel would submit that there had been previous litigations including criminal cases between the parties and the accused appellants have unnecessarily been implicated in this case because of previous enmity. The learned counsel has referred to and relied upon the decisions in Ramesh Kumar v. State of Chhattisgarh: (2001) 9 SCC 618, Madan Mohan Singh v. State of Gujarat & Another: (2010) 8 SCC 628 and Pawan Kumar v. State of Himachal Pradesh: (2017) 7 SCC 780.

The learned counsel has also argued in the alternative that even if the evidence of the prosecution is taken on its face value, the offence against the appellants cannot travel beyond that of insulting the modesty of a woman by some utterances; and in that event too, the appellants could only be held guilty of the offence under Section 509 but not for abetment of suicide under Section 306 IPC. The learned counsel has also argued for appellant No. 2 that as on the day of incident i.e., 05.05.1996, the appellant No. 2 was a minor, being around 16 years of age with his date of birth as 20.04.1980 and hence, he was required to be treated as a juvenile and could not have been sentenced in this trial.

9. Per contra, learned counsel for the respondent has duly opposed the submissions made on behalf of the appellants with reference to the evidence on record and the findings recorded by the Trial Court and the High Court. The learned counsel would submit that the depositions of the witnesses, particularly those of PW-2 and PW-11, establish beyond doubt that the accused persons had insulted, humiliated and harassed the victim, a young girl 18 years of age, on continuous basis and their actions led to the girl ending her life by committing suicide. Hence, according to the learned counsel, the appellants have rightly been convicted for the offence under Section 306 IPC.

10. Having heard learned counsel for the parties and having examined the record with reference to the law applicable, we are clearly of the view that so far the appellant No. 2 (accused No. 3) is concerned, he is entitled to the benefit of Juvenile Justice (Care and Protection of Children) Act, 2000 [‘the Act of 2000’] and the proceedings qua him are required to be terminated.

11. The matriculation certificate issued by the Board of Secondary Education, Haryana dated 24.06.1994 in relation to the appellant No. 2 is placed on record and therein, his date of birth is distinctly recorded as "20.04.1980". This certificate has not been disputed on behalf of the respondents and in the given set of circumstances, we find neither any reason to doubt the correctness and veracity of the same nor there appears any reason to hold further enquiry in the matter.

11.1. The daughter of the complainant was found dead on 06.05.1996 after committing suicide and the cause for her taking such extreme step is said to be the continuous humiliation and harassment by the accused; the last such incident being of 05.05.1996. It is, therefore, evident that the appellant No. 2 was about 16 years of age as on the date/s of incident/s. Though this fact was not placed for consideration before the Trial Court and the High Court but, in the light of the law declared by this Court in the case of *Raju v. State of Haryana*: 2019 (4) SCALE 398, he is entitled to raise this plea even in this appeal. In view of Sections 2(k), 2(l), 7A read with Section 20 of the Act of 2000, the appellant No. 2, being a juvenile who had not completed 18 years of age on the date of commission of the offence, remains entitled to the benefit of juvenility. In *Raju's* case (*supra*) this Court has observed and held as under:

"9. It is by now well-settled, as was held in *Hari Ram v. State of Rajasthan*, (2009) 13 SCC 211, that in light of Sections 2(k), 2(l), 7A read with Section 20 of the 2000 Act as amended in 2006, a juvenile who had not completed eighteen years on the date of commission of the offence is entitled to the benefit of the 2000 Act (also see *Mohan*

Mali v. State of Madhya Pradesh, (2010) 6 SCC 669; Daya Nand v. State of Haryana, (2011) 2 SCC 224; Dharambir v. State (NCT) of Delhi (supra); Jitendra Singh @ Babboo Singh v. State of Uttar Pradesh, (2013) 11 SCC 193). It is equally well-settled that the claim of juvenility can be raised at any stage before any Court by an accused, including this Court, even after the final disposal of a case, in terms of Section 7A of the 2000 Act (see Dharambir v. State (NCT) of Delhi, (supra), Abuzar Hossain v. State of West Bengal, (2012) 10 SCC 489; Jitendra Singh @ Babboo Singh v. State of UP, (supra); Abdul Razzaq v. State of Uttar Pradesh, (2015) 15 SCC 637).

10. In light of the above legal position, it is evident that the Appellant would be entitled to the benefit of the 2000 Act if his age is determined to be below 18 years on the date of commission of the offence. Moreover, it would be irrelevant that the plea of juvenility was not raised before the Trial Court, in light of Section 7A. As per the report of the inquiry conducted by the Registrar (Judicial) of this Court, in this case, the Appellant was below 18 years of age on the date of commission of the offence. The only question before us that needs to be determined is whether such report may be given precedence over the contrary view taken by the High Court, so that the benefit of the 2000 Act may be given to the Appellant.

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25. Criminal Appeal hereby stands allowed and the order of the High Court affirming the conviction and sentence of the Appellant under Section 376(2)(g) of the IPC is set aside. Seeing that the Appellant has already spent 6 years in imprisonment, whereas the maximum period for which a juvenile may be sent to a special home is only 3 years as per Section 15(1)(g) of the 2000 Act. We direct that the Appellant be released from custody forthwith, if he is not required to be detained in connection with any other case.” 11.2. In view of the above and in view of the indisputable fact that the appellant No. 2 was below the age of 18 years on the date of commission of offence, the appeal in his relation deserves to be allowed.

12. Taking up the case of other appellants, as noticed, while entertaining the petition for Special Leave to Appeal in this matter, this Court also issued notice to the appellants as to why they be not suitably punished under appropriate provisions of the Indian Penal Code, even if they were not held guilty for commission of offence under Section 306 IPC with reference to the evidence on record. Apparently, this notice was issued to the appellants with reference to the offence specified in Section 509 IPC, being of "word, gesture or act intended to insult the modesty of a woman". Obviously, this Court had pondered over the broad features of this case while entertaining the prayer for leave to appeal and it was prima facie indicated that even if the acts and actions of the accused in this case fall short of making out a case of abetment of suicide under Section 306 IPC, they might, nevertheless, remain liable under Section 509 IPC for insulting the modesty of a woman. Even during the course of hearing of this matter, we have heard learned counsel for the parties at sufficient

length on this question, of the offence in the alternative. However, having scanned through the entire record with reference to the law applicable, we have no hesitation in concluding that the present case squarely falls within the ambit of Section 306 IPC and the appellants have rightly been held guilty thereunder.

13. The offence of abetment of suicide is specified in Section 306 IPC 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 description for a term which may extend to ten years, and shall also be liable to fine."

13.1. The expression "abetment" within the meaning of Indian Penal Code is defined as follows:

"107. Abetment of a thing.- A person abets the doing of a thing, who-

First. – Instigates any person to do that thing; or Secondly. – Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; 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 causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Explanation 2. – Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act."

13.2. The offence relating the words, gestures or acts intended to insult the modesty of woman is specified in Section 509 IPC as under:

"509. Word, gesture or act intended to insult the modesty of a woman. – Whoever, intending to insult the modesty of any 1 Section 509 IPC was amended by Act No. 13 of 2013 in the present form with enhancement of the term of simple imprisonment to three years in place of the earlier term of one year.

woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to three years, and also with fine."

14. When the accusation in the present case has its genesis in certain acts and utterances attributed to the accused, the meaning and expanse of the expression “abetment”, particularly on its operation in relation to the offence of “abetment of suicide”, is required to be dilated upon. Hence, before proceeding further, apposite it shall be to take note of the case law as cited and as relevant in this matter.

14.1. In the case of Ramesh Kumar (supra), a three-Judge bench of this Court held that the ingredients of Section 306 IPC were not satisfactorily proved so as to implicate and punish the accused for the same. The facts of the case leading to the aforementioned decision had been that the deceased was married to the accused for about a year. The deceased committed suicide by pouring kerosene and setting herself on fire in the kitchen. On the day of incident, the accused had refused to take the deceased to her sister's house and in the quarrel that ensued, the accused-husband told the deceased-wife that she was free to do whatever she wished to and to go wherever she wanted to. The accused attempted to save her by putting a bedsheet around her body and himself suffered burns consequently. The deceased had written a letter to her husband-accused in her diary that he had made her free to go wherever she liked but she was not having any place to go and now she was free of her word not to commit suicide. In her dying declaration too, she stated that she had a quarrel with her husband who told her to go wherever she wanted to and thereafter, she set herself ablaze. The accused-appellant was convicted by the Trial Court for the offences under Sections 306 and 498-A IPC and his conviction was upheld by the High Court. In further appeal, after examining the evidence led in by the parties and taking note of all the surrounding factors, this Court, while maintaining the conviction of the appellant under Section 498-A IPC, set aside his conviction for offence under Section 306. This Court observed and held inter alia, as under:

"19. Presumably the accused may have said some such thing – you are free to do whatever you wish and go wherever you like. The deceased being a pious Hindu wife felt that having being given in marriage by her parents to her husband, she had no other place to go excepting the house of her husband and if the husband had "freed" her she thought impulsively that the only thing which she could do was to kill herself, die peacefully and thus free herself according to her understanding of the husband's wish. Can this be called an abetment of suicide? Unfortunately, the trial court misspelt out the meaning of the expression attributed by the deceased to her husband as suggesting that the accused had made her free to commit suicide. Making the deceased free – to go wherever she liked and to do whatever she wished, does not and cannot mean even by stretching that the accused had made the deceased free "to commit suicide" as held by the trial court and upheld by the High Court.

20. Instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. The present one is not a case where the accused had by his acts or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit

suicide in which case an instigation may have been inferred. A word uttered in the fit of anger or emotion without intending the consequences to actually follow cannot be said to be instigation.

21. In *State of W.B. v. Orilal Jaiswal* [(1994) 1 SCC 73], this Court has cautioned that the court should be extremely careful in assessing the facts and circumstances of each case and the evidence adduced in the trial for the purpose of finding whether the cruelty meted out to the victim had in fact induced her to end the life by committing suicide. If it transpires to the Court that a victim committing suicide was hypersensitive to ordinary petulance, discord and differences, in domestic life quite common to the society to which the victim belonged and such petulance, discord and differences were not expected to induce a similarly circumstanced individual in a given society to commit suicide, the conscience of the Court should not be satisfied for basing a finding that the accused charged of abetting the offence of suicide should be found guilty."

(Underling supplied for emphasis) 14.2. In the case of *Pawan Kumar* (supra), the allegation against the accused was that as he had eloped with the deceased girl, he thought that she was responsible for the criminal proceedings against him by her family and hence, subjected her to abject teasing despite she standing with him and having him acquitted of the offences imputed. On one occasion, while the deceased was staying at her parent's home, he threatened to kidnap her and this led to her pouring kerosene over herself and setting herself ablaze. In her dying declaration, she wrote a letter narrating that the accused was responsible for the step that she had taken. Though the Trial Court had acquitted the accused of all charges, on appeal, the order of acquittal was set aside by the High Court and the accused was convicted under Section 306 IPC and was sentenced to rigorous imprisonment for a period of seven years together with fine. In further appeal, another three-Judge Bench of this Court upheld the order of the High Court with reference to the principles relating to the offence of abetment of suicide. This Court referred to several decisions, including that in the case *Ramesh Kumar* (supra), and observed, inter alia, as under:

"34. The word "abetment" has not been explained in Section 306 IPC. In this context, the definition of abetment as provided under Section 107 IPC is pertinent. Section 306 IPC seeks to punish those who abet the commission of suicide of other. Whether the person has abetted the commission of suicide of another or not is to be gathered from facts and circumstances of each case and to be found out by continuous conduct of the accused, involving his mental element.....

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36. The word "instigate" literally means to goad, urge forward, provoke, incite or encourage to do an act. A person is said to instigate another person when he actively suggests or stimulates him to an act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. Instigation may be in (express) words or maybe by (implied)

conduct.

37. The word "urge forwards" means to advise or try hard to persuade somebody to do something, to make a person to move more quickly in the particular direction, specially by pushing or forcing such person. Therefore, a person instigating another has to "goad" or "urge forward" the latter with the intention to provoke, incite or encourage the doing of an act by the latter. In order to prove abetment, it must be shown that the accused kept on urging or annoying the deceased by words, taunts until the deceased reacted. A casual remark or something said in routine or usual conversation should not be construed or misunderstood as "abetment".

xxx xxx xxx

43. Keeping in view the aforesaid legal position, we are required to address whether there has been abetment in committing suicide. Be it clearly stated that mere allegation of harassment without any positive action in proximity to the time of occurrence on the part of the accused that led a person to commit suicide, a conviction in terms of Section 306 IPC is not sustainable. A casual remark that is likely to cause harassment in ordinary course of things will not come within the purview of instigation. A mere reprimand or a word in a fit of anger will not earn the status of abetment. There has to be positive action that creates a situation for the victim to put an end to life.

44. In the instant case, the accused had by his acts and by his continuous course of conduct created such a situation as a consequence of which the deceased was left with no other option except to commit suicide. The active acts of the accused have led the deceased to put an end to her life. That apart, we do not find any material on record which compels the Court to conclude that the victim committing suicide was hypersensitive to ordinary petulance, discord and difference in domestic life quite common to the society to which the victim belonged. On the other hand, the accused has played active role in tarnishing the self-esteem and self-respect of the victim which drove the victim girl to commit suicide. The cruelty meted out to her has, in fact, induced her to extinguish her life spark.

45. As is demonstrable, the High Court has not reversed the judgment of acquittal solely on the basis of the dying declaration. It has placed reliance on the evidence of the parents and also other witnesses. It has also treated the version of the Pradhan of the Gram Panchayat as credible. All these witnesses have deposed that the accused after his acquittal engaged himself in threatening and teasing the girl. He did not allow her to live in peace.

46. The harassment caused to her had become intolerable and unbearable. The father had deposed that the girl had told him on number of occasions and he had complained to the Pradhan. All these amount to active part played by the accused. It

is not a situation where a person is insulted on being asked to pay back a loan. It is not a situation where someone feels humiliated on a singular act. It is a different situation altogether. The young girl living in a village was threatened and teased constantly. She could not bear it any longer. There is evidence that the parents belong to the poor strata of the society. As the materials on record would reflect, the father could not afford her treatment when case of his daughter was referred to the hospital at Chandigarh. The impecuniosity of the family is manifest. It is clearly evident from the materials brought on record that the conduct of the accused was absolutely proactive."

(Underling supplied for emphasis) 14.3 In the case of Pawan Kumar (supra), this Court also expressed serious concern over the menace of eve-teasing and its adverse impact on the civilized society while indicating the affirmative rights of a woman with reference to Articles 14, 15 and 21 of Constitution of India. This Court referred to an earlier decision and observed as under: -

"47.We are at pains to state that in a civilised society eve teasing is causing harassment to women in educational institutions, public places, parks, railway stations and other public places which only go to show that requisite sense of respect for women has not been socially cultivated. A woman has her own space as a man has. She enjoys as much equality under Article 14 of the Constitutions as a man does. The right to live with dignity as guaranteed under Article 21 of the Constitution cannot be violated by indulging in obnoxious act of eve teasing. It affects the fundamental concept of gender sensitivity and justice and the rights of a woman under Article 14 of the Constitution. That apart creates an incurable dent in the right of a woman which she has under Article 15 of the Constitution. One is compelled to think and constrained to deliberate why the women in this country cannot be allowed to live in peace and lead a life that is empowered with dignity and freedom.....

48. In a civilised society male chauvinism has no room. The Constitution of India confers the affirmative rights on women and the said rights are perceptible from Article 15 of the Constitution. When the right is conferred under the Constitution, it has to be understood that there is no condescension. A man should not put his ego or, for that matter, masculinity on a pedestal and abandon the concept of civility. Egoism must succumb to law. Equality has to be regarded as the summum bonum of the constitutional principle in this context. The instant case portrays the deplorable depravity of the appellant that has led to a heart-breaking situation for a young girl who has been compelled to put an end to her life. Therefore, the High Court has absolutely correctly reversed the judgment of acquittal and imposed the sentence. It has appositely exercised the jurisdiction and we concur with the same."

14.4. In the case of Madan Mohan Singh (supra), the driver of the accused had alleged in his suicide note that the accused had driven him to the extent of committing suicide. However, on evidence, it was found that the deceased had a grudge against his superior and even though the deceased felt that he was wronged at some point in time, there was nothing available on record to prove that the

accused had done anything to instigate the deceased to commit suicide. Hence, this Court observed as under:

"10. We are convinced that there is absolutely nothing in this suicide note or the FIR which would even distantly be viewed as an offence much less under Section 306 IPC. We could not find anything in the FIR or in the so-called suicide note which could be suggested as abetment to commit suicide. In such matters there must be an allegation that the accused had instigated the deceased to commit suicide or secondly, had engaged with some other person in a conspiracy and lastly, that the accused had in any way aided any act or illegal omission to bring about the suicide. "

14.5. We may also refer to the decision in *S. S. Chheena v. Vijay Kumar Mahajan and Ors*: (2010) 12 SCC 190, where this Court reiterated on the essentials of the offence under Section 306 IPC as under:-

"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. The intention of the legislature and the ratio of the cases decided by this Court is clear that in order to convict a person under Section 306 IPC there has to be a clear mens rea to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and that act must have been intended to push the deceased into such a position that he committed suicide."

(Underling supplied for emphasis) 14.6. In *Chitresh Kumar Chopra v. State (Govt. of NCT of Delhi)*: (2009) 16 SCC 605, this Court referred to the decision in *Ramesh Kumar* (supra) and, while pointing out the complexities related with the determination of the question as to the cause of suicide, expounded on the relevant principles in the following:-

"19. As observed in *Ramesh Kumar* (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 or wilful omission or conduct to make the deceased move forward more quickly in a forward direction; and

(ii) that the accused had the intention to provoke, urge or encourage the deceased to commit suicide while acting in the manner noted above.

Undoubtedly, presence of mens rea is the necessary concomitant of instigation.

20.The question 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 or 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."

(Underling supplied for emphasis) 14.7. In the case *Amalendu Pal v. State of W.B.*: (2010) 1 SCC 707, this Court, after reference to several past decisions, held as follows:-

"12. Thus, this Court has consistently taken the view that before holding an accused guilty of an offence under Section 306 IPC, the court must scrupulously examine the facts and circumstances of the case and also assess the evidence adduced before it in order to find out whether the cruelty and harassment meted out to the victim had left the victim with no other alternative but to put an end to her life. It is also to be borne in mind that in cases of alleged abetment of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide. Merely on the allegation of harassment without there being any positive action proximate to the time of occurrence on the part of the accused which led or compelled the person to commit suicide, conviction in terms of Section 306 IPC is not sustainable."

(Underling supplied for emphasis)

15. Thus, "abetment" involves a mental process of instigating a person in doing something. A person abets the doing of a thing when: (i) he instigates any person to do that thing; or (ii) he engages with one or more persons in any conspiracy for the doing of that thing; or (iii) he intentionally aids, by acts or illegal omission, the doing of that thing. These are essential to complete the abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything.

16. In cases of alleged abetment of suicide, there must be a proof of direct or indirect act/s of incitement to the commission of suicide. It could hardly be disputed that the question of cause of a suicide, particularly in the context of an offence of abetment of suicide, remains a vexed one, involving multifaceted and complex attributes of human behaviour and responses/reactions. In the case of accusation for abetment of suicide, the Court would be looking for cogent and convincing proof of the act/s of incitement to the commission of suicide. In the case of suicide, mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case.

16.1 For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by this Court in the decisions above-referred, instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other option except to commit suicide, the case may fall within the four-corners of Section 306 IPC. If the accused plays an active role in tarnishing the self-esteem and self-respect of the victim, which eventually draws the victim to commit suicide, the accused may be held guilty of abetment of suicide. The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

16.2. We may also observe that human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Even in regard to the factors related with the question of harassment of a girl, many factors are to be considered like age, personality, upbringing, rural or urban set ups, education etc. Even the response to the ill-action of eve-teasing and its impact on a young girl could also vary for a variety of factors, including those of background, self- confidence and upbringing. Hence, each case is required to be dealt with on its own facts and circumstances.

17. Having taken an overall view of the applicable principles, we may notice that the real questions arising in this appeal are:

- (i) Whether the accused persons are guilty of the acts and utterances attributed to them; and
- (ii) If the answer to the question (i) is in the affirmative, as to whether such acts and utterances had only been of insult or intimidation or had been of instigation; and whether such acts and utterances amounted to abetment of suicide?

17.1 Before entering into the questions aforesaid, it may be observed that the fact that the daughter of the complainant indeed committed suicide with hanging by neck is not of any dispute in this appeal. The fact has been established on record and the Trial Court as also the High Court have concurrently found this fact proved. No further dilation on this aspect of the matter is requisite.

Similarly, a feeble suggestion on behalf of the accused persons that accused Nos. 3 and 4 were not present in the village on 05.05.1996 does not carry any substance and the finding in that regard is also not required to be interfered with.

18. Coming to the material points for determination in the matter, the question as to whether the accused persons were guilty of the actions and utterances imputed on them does not detain us much longer. The fact that they indeed did so and made such utterances is amply established in the testimony of the prosecution witnesses, particularly PW-1, PW-2 and PW-11, as noticed above. It is also established beyond doubt that such utterances were not of a solitary or one-off incident but the accused, working in unison, had continuously made the imputed utterances towards the daughter of the complainant and continuously taunted the girl, who committed suicide next day after her last encounter with the accused. In the given fact situation, the question is as to whether such actions and utterances of the accused persons lead to the offence of abetment of suicide or only to the offence of insult and/or intimidation?

19. Having examined the record in its totality, we are clearly of the view that the actions and utterances of the accused, directed towards the deceased on continuous basis, had driven her to suicide; and accused persons are guilty of the offence of abetment of suicide.

20. The relevant background aspects of the matter make it clear that the complainant (father of the deceased) and the accused persons, residing in the same village in the State of Haryana, were closely related as cousins but were estranged in relations; and were involved in several civil and criminal cases against each other. Admittedly, there was a property dispute between the parties that was later on compromised but, the relations of the parties did not improve. There was a criminal case by the accused No. 1 (since deceased) against the complainant and his brother, allegedly involving offence under Section 307 IPC. Then, there was another criminal case wherein wife of the complainant (PW-11 Smt. Krishna) alleged that the accused No. 1 of this case had assaulted her with gandasa. The incident of 15.04.1996 (when the deceased girl was dragged by accused No. 1) had allegedly taken place after evidence in the said criminal case lodged by the mother of the deceased girl. The parties, therefore, were not standing on good terms and there had been the elements of rather abject animosity towards each other. On the other hand, the position of the deceased girl had been that she was about 18 years of age; she had failed to clear her 10 th standard examination and was practically a drop out from her studies; and she was engaged for the purpose of marriage but, six months before the incident in question, her engagement had broken. The accused Nos. 1 and 2 were uncles in her relation whereas, the accused Nos. 3 and 4 were her cousins.

21. In the given set up and the respective position of the parties, if the accused No. 1 continuously addressed or called the deceased girl as his “wife”, in our view, the utterance was not merely of teasing but of demeaning and destroying the self-esteem of the young girl whose engagement had broken and whose uncle was mocking her to join him in matrimony. It was the act of humiliation of highest order for the girl, who had personally suffered the set-back of broken engagement, apart that she was unable to clear even 10 th standard examination. Obviously, she was being ridiculed and taunted for her broken engagement. The other accused persons chose to join the accused No. 1 and aggravated the humiliation of the girl by addressing her as younger brother's wife or aunt. There

remains nothing to doubt that the accused persons were working with the common intention to harass and humiliate the girl with reference to her broken engagement. The significant part of the matter is that such taunting and humiliation of the deceased at the hands of the accused persons had not been a singular event or one-off affair but had been a continuous feature, as amply established by the prosecution witnesses. The incident of 05.05.1996 drew the final straw when the hapless girl received the same taunts from the accused persons and she even rebuked them. We find no reason to disbelieve the statement of PW-2 Jai Narain as regards the incident of 05.05.1996. Equally, there is no reason to disbelieve the statement of PW-11 Smt. Krishna that her daughter wept the whole night after the said incident; and on being frustrated and exasperated with such humiliations, expressed her intention to end her life. The fact of the matter remains that the victim girl ended her life in the early morning very next day.

22. Taking an overall view of the matter, we are satisfied that the present one had not been a case of a mere eve-teasing, insult or intimidation but the continuous and repeated acts and utterances of the accused persons were calculated to bring disgrace to the village girl and to destroy her self-esteem; rather the acts and utterances were aimed at taking her to the brink of helplessness and to the vanishing point of tolerance. It had not been a case of mere intimidation or insult. The incessant intimidation and insult of the innocent girl had been of instigation; and such instigation clearly answers to the description of abetment of suicide. Therefore, in our view, the accused Nos. 1 and 3 have rightly been held guilty of offence of abetment of suicide.

23. The contention of the appellants that their intention had never been to make her commit suicide is required to be rejected because, as noticed above, the hapless girl was intentionally chosen for humiliation by the accused, who were otherwise involved in several litigations with her parents. The accused persons also knew it that the father of the girl was posted in his duty outside the village. As noticed, the intention of the accused had only been to drive the deceased to the brink of helplessness and intolerance; they in fact succeeded in doing so on 05.05.1996, when the girl rebuked them for their utterances. However, the victim girl found no way out because the humiliation at the hands of accused had been everyday affair; and, in the given set up of the society she belonged to, any action against the accused by her family was being avoided for the sake of her honour.

24. The present case indeed represents a sordid state of affairs in relation to the young girl in the rural setting, whose honour and self-esteem got brutally violated by none other but her own relatives, who found her to be the soft- target to settle their scores with her parents. The accused rather exhibited their denigrating mentality while targeting the young girl, who was otherwise required to be treated by them with affection and respect, for being their niece and their cousin. The facts of this case lead only to the conclusion that the accused persons had intentionally, with their incessant acts and utterances, goaded the victim girl to commit suicide. She indeed committed suicide within few hours of her last and unbearable encounter with the accused. The acts and deeds of the accused in the evening of 05.05.1996 had been too proximate to the event of suicide by 9 a.m. in the morning of 06.05.1996. As testified by PW-11 Smt. Krishna, her daughter cried the whole night for being unable to bear the daily humiliation at the hands of the accused; and ended her life in the morning.

25. For what has been discussed hereinabove and having examined the matter in its totality, we find no reason to consider any interference in the impugned judgment and order dated 05.05.2008 in relation to the appellant Nos. 1 and 3.

26. Accordingly and in view of the above, this appeal is partly allowed to the extent it relates to the appellant No. 2; the impugned judgment and order of the High Court affirming his conviction are set-aside; and the proceedings in his relation stand terminated. However, the appeal stands dismissed in relation to the other appellants, who shall be required to serve out the remaining part of sentence awarded by the High Court.

.....J. (ABHAY MANOHAR SAPRE)J. New
Delhi, Dated: 25th July, 2019.