

# **Sardar Gurjeet Singh And Another ... vs State Of Uttarakhand on 18 January, 2022**

**Author: Ravindra Maithani**

**Bench: Ravindra Maithani**

Reserved

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Appeal No. 322 of 2021

Sardar Gurjeet Singh and another

.....Appellants

Vs.

State of Uttarakhand

..... Respondent

Present : Mr. Narendra Bali, Advocate for the appellants.  
Mr. Lalit Miglani, AGA with Ms. Sonika Khulbe, Brief Holder for the State.

## **JUDGMENT**

Hon'ble Ravindra Maithani, J.

Instant appeal has been preferred against the judgment and order dated 13.10.2021 passed by the court of Third Additional District & Sessions Judge, Haridwar in Sessions Trial No. 178 of 2015, State of Uttarakhand v. Sardar Gurjeet Singh & another ("the case").

2. By the impugned judgment and order, the appellants have been convicted under Section 306 IPC and sentenced to seven years' rigorous imprisonment and a fine of Rs. 10,000/- each, and in default of payment of fine simple imprisonment for an additional period of six months.

3. Briefly stated, the prosecution case is as follows. The appellants and PW 1 Parmajeet Singh ("the informant") are neighbours. Both had constructed houses as per the approved plan. The appellants started raising constructions in their open space to construct staircase. Once constructed, it would have obstructed the air and light to PW 1 Parmajeet Singh and his family. PW 1 Parmajeet Singh, the informant, filed Original Suit No. 249 of 2014, Parmajeet Singh v. Gurjeet Singh in the court of Civil Judge, Haridwar ("Original Suit"). In the month of June, during vacations of the Civil Courts, the appellants again started the construction w.e.f. 17.06.2014. On 18.06.2014, PW 1 Parmajeet Singh approached the City Magistrate ("CM") and the Haridwar Development Authority ("the HDA") for stopping the construction, but the construction was not stopped by the appellants. Instead, they expedited the construction. The deceased Parmajeet Kaur, who is the wife of PW 1 Parmajeet Singh requested the appellants to stop the construction, but they did not stop it.

PW 1 Paramjeet Singh again on 20.06.2014 approached the CM for stopping the construction. When construction was not stopped, again on 25.06.2014 at about 12 in the noon, PW 1 Paramjeet visited the HDA and informed that after constructing the wall, now the appellants have started raising staircase. In the meantime, the deceased Paramjeet Kaur, who was at home, also requested the appellants that "you have already constructed wall. Now, do not construct staircase". At it, according to the case, both the appellants, abused Paramjeet Kaur and told her "we have spoken at every place, therefore our work would not be stopped. Now instead of telling us not to construct, you better die in Ganges by drowning. Your husband would also die thereafter". Due to this utterance, an altercation ensued. The neighbours intervened and sent the deceased Paramjeet Kaur to her house. After a while, again the deceased Paramjeet Kaur came at the house of the appellants. Both the appellants then told her "now we understand that you are going to die". As per the prosecution case, thereafter Paramjeet Kaur set herself ablaze. When PW 1 Paramjeet Singh was at the HDA office, he came to know about the incident. Deceased Paramjeet Kaur was admitted in hospital. She succumbed to the injuries on 27.06.2014. PW 1 lodged an FIR. Based on it, Case Crime No. 446 of 2014 under Section 306 IPC was lodged against the appellants and the investigation proceeded.

4. In fact, when PW 1 Paramjeet Singh reached his house, he had also found a suicide note written by the deceased Paramjeet Kaur. The suicide note was given along with FIR, which was taken into custody by the Investigating Officer ("the IO") on 27.06.2014. On 27.06.2014, the inquest of the deceased Paramjeet Kaur was prepared. On the same day, her post mortem was conducted. According to the postmortem report, the death was caused due to shock due to ante mortem burn injuries.

5. The IO prepared the site plan of the place of incident. He also took into custody some sample writings of the deceased Paramjeet Kaur. The suicide note and the admitted handwriting of the deceased were sent for forensic examination and the report confirmed that both the handwritings are of one and the same person.

6. After investigation, the IO submitted chargesheet under Section 306 IPC against both the appellants.

7. On 24.06.2019, charge under Section 306 IPC was framed against the appellants. Both of them denied the charges and claimed trial.

8. The prosecution examined eight witnesses in evidence. They are PW 1 Paramjeet Singh, PW 2 Constable 706 Pramod Negi, PW 3 K.K. Mishra, PW 4 Ajeet Singh, PW 5 SI Kiran Aswal, PW 6 Pankaj Devrani, PW 7 Dr. Sanjay Jain and PW 8 SI Rakesh Khanduri. The appellants were examined under Section 313 of the Code of Criminal Procedure, 1973. According to them, they have been falsely implicated. The witnesses have given false evidence. Both the appellants have stated that, in fact, witness K.K. Mishra in conspiracy with PW 1 Paramjeet Singh and other witnesses wanted to sell the house of the appellants so that they may construct a hotel at that place and when the appellants declined to sell their house, they were falsely implicated.

9. The court below after hearing both the parties convicted and sentenced the appellants, as stated hereinbefore. Aggrieved by it, the appellants have filed the instant appeal.

10. Learned counsel for the appellants would submit that the prosecution has not been able to prove the charge against the appellants, but the court below committed an error in convicting and sentencing the appellants. Learned counsel has raised the following points in his submission:-

(i) The appellants had been raising constructions on their own land since the year 2013.

(ii) The appellants did not instigate the deceased to commit suicide. The deceased and the informant were unnecessarily raising the issue of construction. The appellants did not create the situation.

(iii) With regard to death of the deceased Paramjeet Kaur, a complaint was filed against the HDA and it has been admitted by PW 1 Paramjeet Singh, the informant.

(iv) The prosecution has even not been able to prove as to which words were used by each of the appellants. Joint utterance has been tried to be established, which cannot be made basis for conviction.

(v) Specific words spoken by each of the appellants have not been proved.

(vi) Except PW 3 K.K. Mishra and PW 4 Ajeet Singh, no other witness did reveal the incident to the IO.

(vii) It is not a case of instigation by the appellants. There is no continuous harassment.

(viii) Use of abusive language itself does not make out a case under Section 306 IPC

(ix) If something is uttered in a fit of anger without any intention, it may not amount abetment.

(x) No active role has been assigned to the appellants in the death of the deceased Paramjeet Kaur.

11. Learned counsel for the appellants would also submit that the appellants were raising constructions in their own land and if somebody was unnecessarily stopping them to do so, and some day, even if for the sake of argument it is admitted that the appellants said as to why do not you die, it, according to learned counsel for the appellants, does not amount to abetment of suicide.

12. In support of his contention, learned counsel for the appellants placed reliance in the case of Rajesh & others v. State of Haryana, 2019 SCC OnLine SC 44, Shabbir Hussain v. State of Madhya Pradesh and others, 2021 SCC OnLine 743, Gurcharan Singh v. State of Punjab, 2020 (10) SCC 200, Arnab Manoranjan Goswami v. State of Maharashtra and others, 2021 (2) SCC 427, Ude Singh & others v. State of Haryana, (2019) 17 SCC 301, M Arjunan v. State, (2019) 3 SCC 315 and Geo Varghese v. State of Rajasthan and another, 2021 SCC OnLine 873.

13. In the case of Rajesh (supra), the Hon'ble Supreme Court discussed the provision of Section 306 IPC and held that 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 under Section 306 IPC is not sustainable. The Hon'ble Supreme Court observed as hereunder:-

"9. Conviction under Section 306 IPC is not sustainable 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. In order to bring a case within the purview of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide. Therefore, the act of abetment by the person charged with the said offence must be proved and established by the prosecution before he could be convicted under Section 306 IPC. (See Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] )

10. The term "instigation" under Section 107 IPC has been explained in Chitresh Kumar Chopra v. State (NCT of Delhi) [Chitresh Kumar Chopra v. State (NCT of Delhi), (2009) 16 SCC 605 : (2010) 3 SCC (Cri) 367] as follows: (SCC p. 611, paras 16-17) "16. Speaking for the three-

Judge                      Bench                      in Ramesh  
Kumar v. State                      of

Chhattisgarh [Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618 :

2002 SCC (Cri) 1088] , R.C. Lahoti, J. (as His Lordship then was) said that instigation is to goad, urge forward, provoke, incite or encourage to do "an act". To satisfy the requirement of "instigation", though it is not necessary that actual words must be used to that effect or what constitutes "instigation" must necessarily and specifically be suggestive of the consequence. Yet a reasonable certainty to incite the consequence must be capable of being spelt out. Where the accused had, by his acts

or omission or by a continued course of conduct, created such circumstances that the deceased was left with no other option except to commit suicide, in which case, an "instigation" may have to be inferred.

A word uttered in a fit of anger or emotion without intending the consequences to actually follow, cannot be said to be instigation.

17. Thus, to constitute "instigation", a person who instigates another has to provoke, incite, urge or encourage the doing of an act by the other by "goad" or "urging forward". The dictionary meaning of the word "goad" is "a thing that stimulates someone into action;

provoke to action or reaction"

(see Concise Oxford English Dictionary); "to keep irritating or annoying somebody until he reacts"

(see Oxford Advanced Learner's Dictionary, 7th Edn.)."

(emphasis in original)

11. Words uttered in a fit of anger or omission without any intention cannot be termed as instigation. (See Praveen Pradhan v. State of Uttaranchal [Praveen Pradhan v. State of Uttaranchal, (2012) 9 SCC 734 : (2013) 1 SCC (Cri) 146] "

14. In the case of Shabbir Hussain (supra) also the Hon'ble Supreme Court discussed the ingredients of Section 306 IPC and observed as hereunder:-

"4. In order to bring a case within the provision of Section 306 IPC, there must be a case of suicide and in the commission of the said offence, the person who is said to have abetted the commission of suicide must have played an active role by an act of instigating or by doing a certain act to facilitate the commission of suicide.

5. Mere harassment without any positive action on the part of the accused proximate to the time of occurrence which led to the suicide would not amount to an offence under Section 306 IPC [Amalendu Pal v. State of West Bengal, (2010) 1 SCC 707].

6. Abetment by a person is when a person instigates another to do something. Instigation can be inferred where the accused had, by his acts or omission created such circumstances that the deceased was left with no option except to commit suicide. [Chitresh Kumar Chopra v. State (Government of NCT of Delhi), (2009) 16 SCC 605]."

15. In the case of Gurcharan Singh (supra), the Hon'ble Supreme Court referred to the principle of law laid down in the various cases in the matter of Section 306 IPC. In paragraph 15 of the

judgment, the Hon'ble Court observed "As in all crimes, mens rea has to be established. To prove the offence of abetment, as specified under Section 107 IPC, the state of mind to commit a particular crime must be visible, to determine the culpability. In order to prove mens rea, there has to be something on record to establish or show that the appellant herein had a guilty mind and in furtherance of that state of mind, abetted the suicide of the deceased. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous."

16. In the case of Arnab Manoranjan Goswami (supra), the Hon'ble Supreme Court discussed the various aspects of the offence under Section 306 IPC and referred the principle of law as laid down in various judgments by the Hon'ble Supreme Court. In para 50, 51 the Hon'ble Supreme Court observed as hereinunder:

"50. The first segment of Section 107 defines abetment as the instigation of a person to do a particular thing. The second segment defines it with reference to engaging in a conspiracy with one or more other persons for the doing of a thing, and an act or illegal omission in pursuance of the conspiracy. Under the third segment, abetment is founded on intentionally aiding the doing of a thing either by an act or omission. These provisions have been construed specifically in the context of Section 306 to which a reference is necessary in order to furnish the legal foundation for assessing the contents of the FIR. These provisions have been construed in the earlier judgments of this Court in State of W.B. v. Orilal Jaiswal [State of W.B. v. Orilal Jaiswal, (1994) 1 SCC 73 :

1994            SCC        (Cri)    107]        , Randhir  
Singh v. State                of        Punjab [Randhir

Singh v. State of Punjab, (2004) 13 SCC 129 : 2005 SCC (Cri) 56] , Kishori Lal v. State of M.P. [Kishori Lal v. State of M.P., (2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] ("Kishori Lal") and Kishangiri Mangalgiri Goswami v. State of Gujarat [Kishangiri Mangalgiri Goswami v. State of Gujarat, (2009) 4 SCC 52 : (2009) 2 SCC (Cri) 62] . In Amalendu Pal v. State of W.B. [Amalendu Pal v. State of W.B., (2010) 1 SCC 707 : (2010) 1 SCC (Cri) 896] , Mukundakam Sharma, J., speaking for a two-Judge Bench of this Court and having adverted to the earlier decisions, observed : (SCC p. 712, para

12) "12. ... 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."

51. The Court noted that before a person may be said to have abetted the commission of suicide, they "must have played an active role by an act of instigation or by doing certain act to facilitate the commission of suicide". Instigation, as this Court held in Kishori Lal [Kishori Lal v. State of M.P.,

(2007) 10 SCC 797 : (2007) 3 SCC (Cri) 701] , "literally means to provoke, incite, urge on or bring about by persuasion to do anything". In S.S. Chheena v. Vijay Kumar Mahajan [S.S. Chheena v. Vijay Kumar Mahajan, (2010) 12 SCC 190 :

(2011) 2 SCC (Cri) 465] , a two-Judge Bench of this Court, speaking through Dalveer Bhandari, J., observed : (SCC p.

197, para 25) "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."

17. In the case of Ude Singh (supra) the Hon'ble Supreme Court, in fact interpreted the word "instigation" as to what it mean and how instigation could be inferred to. In paragraph 16, 16.1 & 16.2, the Hon'ble Supreme Court observed as hereunder:

"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 the 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."

18. In the case of M. Arjunan (supra), the Hon'ble Supreme Court, inter alia, observed "The act of the accused, however, insulting the deceased by using abusive language will not, by itself, constitute the abetment of suicide. There should be evidence capable of suggesting that the accused intended by such act to instigate the deceased to commit suicide."

19. In the case of Geo Varghese (supra) also, the Hon'ble Supreme Court referred to various judgments on the subject and in paragraph 23 of the judgment observed as hereunder:-

"23. What is required to constitute an alleged abetment of suicide under Section 306 IPC is there must be an allegation of either direct or indirect act of incitement to the commission of offence of suicide and mere allegations of harassment of the deceased by another person would not be sufficient in itself, unless, there are allegations of such actions on the part of the accused which compelled the commission of suicide. Further, if the person committing suicide is hypersensitive and the allegations attributed to the accused is otherwise not ordinarily expected to induce a similarly situated person to take the extreme step of committing suicide, it would be unsafe to hold the accused guilty of abetment of suicide. Thus, what is required is an examination of every case on its own facts and circumstances and keeping in consideration the surrounding circumstances as well, which may have bearing on the alleged action of the accused and the psyche of the deceased."



(emphasis supplied)

20. On the other hand, learned State Counsel would submit that the FIR in the instant case is named. Specific role has been assigned to the appellants. There is a suicide note also authored by the deceased. The incident has been proved by the independent witnesses. The victim was an aged woman. The appellants had put the deceased in such circumstances that she did not have any other option except to commit suicide. The appellants were raising illegal constructions. The deceased was depressed due to their action. She was humiliated, abused and instigated to commit suicide.

21. Learned State Counsel would submit that the evidence has established that on 25.06.2014 at about 01:00 p.m., firstly the appellants instigated the deceased to commit suicide by asking her to go and die by drowning in Ganges, and abused and humiliated her and when after some time the deceased re-appeared, she was again humiliated and instigated to commit suicide. She had no option but to commit suicide. The act of the appellants is active and continuous. The appellants did provoke the deceased to commit suicide.

22. Learned State Counsel also referred to the principle of law as laid down in the cases of Arnab Manoranjan Goswami (supra) and Ude Singh (supra).

23. Heard learned counsel for the parties and perused the record.

24. PW 1 Paramjeet Singh is the informant. He is the husband of the deceased Paramjeet Kaur. This witness has proved the FIR. According to him, his house and the house of the appellants are adjacent. Both have open spaces. The houses have been constructed as per approved plan. The appellants had started raising some construction, which could have deprived this witness of his right to air and light. Therefore, he filed the Original Suit. It was pending. Taking advantage of the civil court's vacations in the month of June, according to PW 1 Paramjeet Singh, the appellants Gurjeet again started raising illegal constructions on 17.06.2014. This witness approached the CM and the HDA on 18.06.2014 against the construction. He filed applications, but no actions were taken on them. Appellant Gurjeet Singh expedited the illegal construction. This witness and his wife requested the appellants that though they have constructed the wall, but please do not construct staircase. But, according to PW 1 Paramjeet Singh, the appellants further expedited their constructions. Again, this witness approached the CM on 20.06.2014 and filed an application, but no action was taken and the construction further expedited. On 25.06.2014, this witness again moved a complaint before the HDA. He visited the office of the HDA. His wife, the deceased Paramjeet Kaur was in the house on that day. She requested the appellants that please do not raise staircase. Thereafter, according to this witness, both the appellants abused her and told her that they have spoken to everyone and their construction cannot be stopped and they also said "instead of telling us not to construct, you better die in Ganges by drowning. Your husband would also die thereafter". Due to this utterance, an altercation ensued, but other neighbours intervened and sent the deceased Paramjeet Kaur to her house.

25. According to PW 1 Paramjeet Singh, when he returned from the HDA, he saw crowd in his house. Thereafter, he was told about the incident. By the time he reached, his wife had already been

taken to Government Hospital. His house was open. He went inside and found the suicide note written by the deceased Paramjeet Kaur. The deceased Paramjeet Kaur was shifted in a hospital at Dehradun, where she died in the midnight of 26.06.2014. She was cremated and thereafter, according to this witness, he lodged the FIR, Exb. A-1. This witness has also proved his signature on the inquest. According to him, some burnt chappals, cloths, etc. were taken into custody by the police, and this witness also signed them. He also gave the suicide note to the police and signed the recovery note. This witness has proved the articles, which were taken into custody by the police.

26. PW 1 Paramjeet Singh categorically identified the handwriting and signature of his wife on the suicide note which is Exb. A-1. He also identified the signature of his wife on a cheque no. 783134 of Punjab and Sind Bank, based on which, the handwriting and signature on the suicide notes were examined at Forensic Science Laboratory "the FSL"). These documents were taken into custody by police during investigation.

27. PW 3 K.K. Mishra is the neighbour, who had witnessed the incident. According to him, on 25.06.2014 at about 12 - 1, in the noon, he came out of his house and saw that the appellants were telling it to the deceased that "they would not stop the construction and if you have little self-esteem left in you, go and die in Ganges by drowning". The appellants also used abusive words to the family of the deceased. According to PW 3 K.K. Mishra, thereafter they intervened and sent the deceased Paramjeet Kaur to her house, but still the appellants continued abusing. After 22 to 25 minutes, the deceased Paramjeet Kaur came out of her house. Spotting her, according to this witness, again the appellants told her "we thought that you have gone to die, but you have come again. If you have a little self-esteem, go and die". Thereafter, according to this witness, due to instigation given by the appellants, the deceased set herself ablaze.

28. PW 4 Ajeet Singh is another neighbour of the parties. He has also corroborated the statement of PW 3 K.K. Mishra. He had witnessed when deceased Paramjeet Kaur set herself ablaze.

29. PW 2 constable Pramod Negi proved the chik FIR and entries in the general diary.

30. PW 5 SI Kiran Aswal had prepared the inquest report, she has proved it.

31. PW 6 SSI Pankaj Devrani conducted the investigation, prepared the site plan, took into custody the admitted handwritings of the deceased and burnt articles and prepared a recovery memo of it. He also proved the chargesheet.

32. PW 7 Dr. Sanjay Jain conducted the postmortem of the deceased. According to him, the deceased had 85% burn. He proved the postmortem report Exb. A-4. According to him, cause of the death was shock due to ante mortem burn injuries.

33. PW 8 SI Rakesh Khanduri had taken into custody the suicide note. He proved the recovery memo of it, which is Exb. A-15.

34. The appellants have been convicted under Section 306 IPC. This Section is as hereunder:-

"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."

35. In order to bring home the guilt under Section 306 IPC, abetment as such has to be proved. The word "abetment" has been defined under Section 107 IPC. It is as hereunder:-

"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."

36. A bare perusal of Section 107 IPC makes it abundantly clear that, in fact, it classifies the acts in three categories, namely - (i) Instigation (ii) Conspiracy and (iii) intentional acts.

37. In the instant case, according to the prosecution, the appellants instigated the deceased Paramjeet Kaur to commit suicide and thereby made abetment of suicide. The word instigation has been interpreted in various judgements, some of which have already been cited hereinbefore.

38. Instigation is to provoke, urge forward, invoke, incite or encourage to do an act. Use of actual words for that purpose is not necessary to constitute "instigation". But, as held in the case of Ramesh Kumar (supra), as cited in the case of Rajesh (supra) "Yet a reasonable certainty to incite the consequence must be capable of being spelt out." It may be inferred by the circumstances.

39. Some of the principles may be summed up as hereunder:-

(i) If accused created such a circumstance that the deceased was left with no other option except to commit suicide, it is instigation.

(ii) Words uttered in a fit of anger or emotion without any intention is not instigation.

(iii) The harassment without any positive action on the part of the accused does not amount to abetment.

(iv) The accused must have played an active role by an act of instigation or by doing a certain act to facilitate the commission of suicide.

(v) The accused must have a guilty mind.

(vi) The ingredients of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

(vii) Instigation literally means to provoke, incite, urge on or bring about by persuasion to do anything.

(viii) If a person, who commits suicide is hyper sensitive and his action is otherwise not ordinarily expected, conviction for abetment of suicide may not be safe.

(ix) If an accused played 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 to suicide.

(x) The question of mens rea may be gathered from actual acts and deeds of the accused.

(xi) 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.

(xii) The act of accused, however insulting by using abusive language, will not by itself constitute the abetment of suicide.

(xiii) Mere allegations of harassment may not be sufficient, unless there are allegations of such action on the part of the accused, which compelled the deceased to commit suicide.

40. A person, who commits suicide ends his life. It is done by the person himself, but some other person is held guilty for it, on the ground that such other person/accused abetted the deceased to commit suicide. Abetment is, in fact, controlling the mind of other to do a certain act. If an accused has, in fact, controlled the mind of the deceased and drove him to commit suicide, such an accused is guilty of abetment of suicide.

41. In the case of Ude Singh (supra), in para 16.2 as quoted hereinbefore, the Hon'ble Supreme Court has adverted to this aspect and observed "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". In fact, reaction of a human mind depends on numerable factors i.e. age, upbringing, education, social status, economic status, relationship between the accused and the deceased; the subject on which allegedly the abetment was made; whether the subject was close to the deceased; whether the deceased was related to the subject emotionally, financially, or in any other manner; the relation between the deceased and accused qua the subject involved between them which triggered the alleged abetment. This list cannot be made exhaustive. As stated how a

human mind reacts in a particular situation, no theorem or formula can make such assessment. It is, in fact, infinite.

42. In view of the settled legal position, the court proceeds to examine the instant case.

43. On behalf of the appellants, it is argued that the specific words uttered by the appellants are not proved and there has been no continuous harassment.

44. Before this Court proceed to examine the evidence qua the arguments in the contexts of finding recorded in the impugned judgment, it would be pertinent to look at the age and relationship between the parties.

45. The deceased and her husband were neighbours of the appellants. The deceased was 60 years of age in the year 2014, when she died. Her husband Paramjeet Singh was 72 years of age, when he was examined in the court on 01.03.2019, which means he was 67 years of age in the year 2014, when the incident occurred.

46. The appellants Gurjeet Singh and Smt. Devender Kaur were 50 and 44 years of age respectively on 02.03.2020, when they were examined under Section 313 of the Code, which means Smt. Devender Kaur was 38 years of age in the 2014 and appellant Gurjeet Singh was 44 years of age, when the incident took place.

47. The appellants were quite young in comparison to the deceased and her husband Paramjeet Singh. Their houses were constructed as per approved plan. They have open spaces in their houses, but the appellants had tried to raise certain constructions, which according to the prosecution, PW 1 Parmjeet Singh and the deceased Paramjeet Kaur apprehended that it would obstruct their right to light and air. They had filed the Original Suit in the month of February, 2014. The construction had begun in the month of February, 2013. In the Original Suit, interim order was not granted in favour of PW 1 Paramjeet Singh. (These facts were revealed by PW 1 Paramjeet Singh in his cross-examination). In the month of June, Civil Courts remained closed and, according to the prosecution, at that time the appellants expedited their illegal construction. PW 1 Paramjeet Singh and his wife approached various authorities to get the illegal construction stopped, but they could not succeed. In this backdrop, the matter has to be assessed.

48. The deceased and her husband were living all alone in their house. An old couple was objecting to illegal constructions, which they apprehended would deny them their right to air and light. Admittedly, the appellants were raising construction in their own land. The construction was subsequently abolished. It is stated by PW 3 K.K. Mishra, in his cross-examination, (page 2, conducted on 21.09.2019 in first paragraph).

49. During trial, on behalf of the prosecution, an application 104B was given on 12.03.2020 for placing on record the ex parte judgment dated 17.12.2019 passed in the Original Suit. The suit was ex parte decreed. This document has been taken on record by the court on 19.02.2021. This is a certified copy of a judgment, which can be read into evidence. In page 8, para 2 of this judgment

dated 17.12.2019, it has been categorically held by the court that the appellants had raised illegal constructions. In fact, they had encroached towards the road also and they had also applied for compounding of the illegal constructions raised by them. But the construction could not be compounded because the encroachment was extended on the road. There is no other evidence, which may rebut it. Although, as stated, PW 3 K.K. Mishra, at one stage has stated that the Development Authorities had demolished the constructions. That part of the evidence cannot as such be taken to be true in view of the judgment passed in the Original Suit dated 17.12.2019 because by this judgment, the appellants were directed to demolish their illegal constructions. The fact remains that the findings in the Original Suit dated 17.12.2019 confirms that the appellants raised illegal constructions. They encroached towards the road also.

50. PW1 Pramjeet Singh has categorically stated the chronology of the events. He filed original suit in the month of February, 2014. In the month of June, appellant further raised construction. PW1 Paramjeet Singh approached the CM and the HDA on 18.06.2014, 20.06.2014 and 25.06.2014. He could not get the illegal construction stopped. In his cross- examination recorded on 18.07.2019, he has given details of it. The deceased and PW1 Paramjeet Singh felt humiliated. They felt, as if, their self esteem was destroyed. They felt that despite their right, they are not being given justice. Had it been this only, the things would have been different. But, beyond it, there is the role of the appellants qua the deceased and PW1 Paramjeet Singh.

51. PW1 Paramjeet Singh has categorically stated that he and his wife, the deceased Paramjeet Kaur requested the appellants not to raise construction. But, they did not yield to their requests. It was repeated requests at certain intervals. The things aggravated from 17.06.2014 when the appellants started construction again during summer vacations of the civil courts and finally it was on 25.06.2014, the appellants had raised the wall and they were in the process of raising staircase. PW1 Paramjeet Singh visited the HDA Office. At the home, his wife deceased Paramjeet Kaur requested the appellants not to raise further construction. At this moment, according to PW1 Paramjeet Singh, the deceased was misbehaved, abused and both the appellants told her that "if she has a little self esteem left in her, she should die in Ganges by drowning". The altercations ensued but intervened by the neighbours. The deceased Paramjeet Kaur was sent back to her house.

52. PW3 K.K. Mishra in clear terms stated that after the deceased Paramjeet Kaur was sent to her house, the appellants continued using abusive language to her. The deceased again come out from her house, but she was further humiliated by the appellants by saying "we thought you have gone to die, but you have come again, if you have little self esteem left in you go and die". It is thereafter, the deceased committed suicide. The act of the appellants is continuous. It is not only on one occasion that the appellants did only utter words. They played active part in it. On the one hand, they declined to stop illegal construction and on the other hand, the appellants humiliated the deceased.

53. PW4 Ajeet Singh has also stated about it. Both these witnesses have used the words that the appellants instigated the deceased to commit suicide. Instigation is not by words, but by conduct also. In the instant case, it is by both, by words used by the appellants and by their conduct as well.

54. An argument has been raised that actual words spoken by the appellants have not been proved. This argument does not merit acceptance. The actual words used by the appellants have been proved by the prosecution.

55. PW3 K.K. Mishra and PW4 Ajeet Singh have stated about it. These witnesses have been cross-examined at a great length. Their presence at the place of occurrence and their reliability in any manner is not doubtful. Their evidence is much reliable and credible. They are truly independent witnesses. They are neighbours. Who else would be the best witness?

56. It is argued on behalf of the appellants that the appellants were raising construction in their own house and the deceased and her husband were unnecessarily objecting to it. This argument has no legs to stand. The ex parte judgment dated 17.12.2019, passed in the Original Suit, confirms that the construction was illegal.

57. In the instant case, the appellants continuously harassed the deceased. It is the appellants who created the situation. Words used by the appellants were not in the fit of anger. They made repeated utterances.

58. In the instant case, there is a suicide note as well authored by the deceased herself. According to it, despite court's case, illegal construction has not been stopped. The deceased writes in her suicide note "I Paramjeet Kaur commit suicide in front of the house of Gurjeet Singh and his wife due to harassment by their threats and their Dadagiri." It also writes "we husband and wife are helpless in this old age, we can only take legal proceedings. Vikas Pradhikaran is assisting them". This suicide note is not with the words alone. The statement of PW1 Paramjeet Singh, PW3 K.K. Mishra and PW4 Ajeet Singh makes the suicide note complete. This suicide note alongwith statements of the witnesses proves that, in fact, the appellants by their acts and by their continuous conduct tarnished the self esteem and self respect of the deceased, which eventually drove the deceased to commit suicide. It proves beyond the shadow of reasonable doubt that the appellants provoked, incited and encouraged the deceased to commit suicide.

59. In view of the foregoing discussions, this Court is of the view that the prosecution has been able to prove beyond reasonable doubt the charge under Section 306 IPC against both the appellants. The court below has rightly convicted and sentenced the appellants. There is no merit in the appeal. Accordingly, it is liable to be dismissed.

60. The appeal is dismissed.

61. The appellants are in jail.

62. Let a copy of this judgment be forwarded to the appellants. A copy of this judgment along with lower court record be forwarded to the court concerned for compliance.

(Ravindra Maithani, J.) 18.01.2022 Avneet/