

(2015) 04 GUJ CK 0022

In the Gujarat High Court

Case No : Criminal Misc. Application (for quashing and set aside FIR/Order) No. 16032 of 2014 and Criminal Misc. Application Nos. 18645 and 18647 of 2014

Lalitbhai Vikramchand Parekh

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 10-04-2015

Acts Referred:

Bombay Provincial Municipal Corporations Act, 1949 — Section 260(1), 260(2)
Criminal Procedure Code, 1973 (CrPC) — Section 482
Industrial Disputes Act, 1947 — Section 27
Penal Code, 1860 (IPC) — Section 107, 108, 114, 115, 306

Citation : (2015) 04 GUJ CK 0022

Hon'ble Judges : J.B. Pardiwala, J.

Bench : Single Bench

Advocate : Hardik H. Dave, for the Appellant; L.R. Pujari, APP, Advocates for the Respondent

Final Decision : Allowed

Judgement

J.B. Pardiwala, J.—Since the prayer in all the three captioned applications is to quash a selfsame charge-sheet, those were heard analogously and are being disposed of by this common judgment and order.

2. The suicide is final: Once you take your life, that's it. You have only one life. End it - and you are done. You will never, ever get a second chance. The one who keeps you strong when nobody else does. The one who stands by you when everyone walks out. Imagine the pain, the sadness, the grief they would feel when you are gone. Even if you don't think, you have a special person worth living for, you do. You just don't know it yet.

3. By these three applications, the applicants-accused, seek to invoke the inherent powers of this Court, praying for quashing of the charge-sheet filed by the Investigating Officer, against them for the offence punishable under Sections

306, 506 and 115 read with section 114 of the IPC, arising from a First Information Report, being C.R No. I-102/13, registered with the "A" Division Rajkot City Police Station, Rajkot.

4. The case of the prosecution may be summarized as under:-

4.1 The applicants herein are all members of a residential society, running in the name of Chhotunagar Co-operative Society, situated at Raiya Road, Rajkot. The Society had employed one Mansing (since deceased) as a Part-time Peon for doing miscellaneous office work of the Co-operative Society. The Chairman of the Society had allotted one room constructed on the common plot to Mansing for living in it without any rent. Mansing and his wife Vasumati along with their children were residing in the said room. In the night hours, Mansing used to work as a Watchman in the Society as well as in the surrounding areas. The Society used to pay some amount to Mansing for his services. Mansing passed away some time in the year 2009. The wife of Mansing and his children started residing at Deepak Society, situated near the Gandhigram Kanaiyachowk. Since the house situated in Deepak Society required some immediate repairs, the children of late Mansing started putting up construction of one additional room besides the old room situated on the common plot of the Society. This triggered the controversy between the members of the Society and the family members of late Mansing. The members of the Society opposed the construction of the room on the common plot of the Society adjacent to the old room, in which at one point of time Mansing used to stay with his family. The issue reached right upto the Rajkot Municipal Corporation. The Corporation also issued notice to the son of late Mansing, namely Bharatbhai Mansing Nepali, under Section 260(1) of the BPMC Act, regarding the illegal construction. It appears that a Civil Suit was also filed by one of the deceased persons, namely Girishsing Nepali, challenging the order -notice issued by the Corporation under Section 260(2) of the BPMC Act.

4.2 It appears that on account of such dispute, the entire family of late Mansingh committed suicide by setting themselves on fire after dousing with kerosene. The First Information Report was lodged by one Gauriben, the wife of Girishbhai Nepali, as regards the incident of suicide.

4.3 The exact picture of the incident is narrated by Shantaben Nepali, the mother of late Mansing in her statement dated 5.4.2013. The free English translation of her statement, which forms part of the charge-sheet, reads as under:-

"Date : : 05/04/2013

My name is Shantaben w/o Damarsinh Vishwakarma [Nepali], Aged about 80, Occupation - Housewife, Address Chhotunagar Society, Common Plot Raiya Road, Rajkot.

On personally asking I state that I am residing at the above address with my family and doing household work. I had one son named Mansing. He had expired about four years ago. The name of his wife is Vasumati. At present she is in

hospital under treatment. Mansing had three sons, of them Bharat was the eldest, and at present he had died in the recent incident took place. The name of the wife of Bharat is Asha. She had also expired in the incident took place. Bharat had two daughters and one son, of them the daughter Madhura is the first daughter and daughter Amrata is second, and son Vijay is third child, thereafter there was a son Girish, he has also expired in the incident took place recently. The name of wife of Girish is Gauri. Girish had two children of them Aryan is elder and Jai is younger. After Girish the third son is Mahendra, the name of his wife is Rekha, at present she is under treatment in hospital. Mahendra has two sons, of them Arun is elder and Om is younger.

My son Mansing came to Rajkot about thirty five years ago, at that time the Chhotunagar Society Chairman had engaged Manisg as part time peon for doing the office work of the society. And the Society Chairman had given a room on the common plot to Mansing for living without any rent. Thus, Mansing and his wife Vasumati were living in it, and the children of Mansing were also living with them. Later on Mansing had called me so I had also come from the native and live with Mansing. At night Mansing worked as watchman in the society and in the surrounding areas. Thus, the society people paid him compensation and since past about five years Bharat and his wife and his children had gone to live in Deepak Society near Gandhigram Kanaiyachowk, and they were living there. Bharat was always frequenting Chhotunagar Society Common Plot and major part of our family management was done by Bharat and Girish.

Almost about one year ago Bharat and Girish decided to undertake some repairing work of our said room as it was in a dilapidated condition and to make a room with tinned roof sheets. After taking such decision, besides our old room on the common plot in the society, the work of new room was started. Thus, the society persons had opposed the same and asked not to construct the room. Also about four years ago when my first son Mansing had expired then the society people were asking to vacate the plot and leave, therefore there was dispute started in this regard, wherein on the plot new room construction work was started. Thus, the dispute with the society had become more agitated and false representations were made against us in the Rajkot Municipal Corporation and by reason of giving such applications to the Corporation, electricity and water connections to the room in which we are living, which we were enjoying since years, were disconnected. Also, in the common plot in the society with a view that there should be difficulties caused to us in ingress therefore they have put debris and earth heaps unloaded tractor full, in this manner they had started to cause us harassment, thus, my son Bharat and Girish had made representation before the Municipal Commissioner, but on behalf of the Corporation also there was notice issued for halting the construction of the room and for demolishing, and the society people were also pressurizing us to vacate the plot and leave, thus both my sons had filed the suit in the court, in spite of this Chhotunagar Society had continued to harass us for vacating the plot, and they had made false representations before the Corporation and taken action for halting the

construction and demolishing it, in this regard there were notices issued to us, in this manner the society people were causing harassment, thus our family members had become fed up.

Thus, we had taken the decision of self immolation, and on 3/4/2013 in the afternoon at about eleven o'clock Bharat had talked to some one on the telephone from Chhotunagar Society common plot, and thereafter he had said that we have to go to the Corporation, saying this my son Bharat and Girish and myself and Bharat's wife Asha and Girish's wife Gauri Mahendra's wife Rekha and Mansingh's wife Vasumati, in this manner seven members of our family had walked from the Chhotunagar society Common plot and went to the Raiya Road, from there we had hired a rickshaw and went to the back door of Corporation, at that place we got down from the rickshaw and from the back gate went near the office of the Municipal Commissioner, and there in the afternoon at about twelve o'clock we had reached the lobby of the Municipal Commissioner and Bharat and Girish were carrying school bags with them in which they had kept kerosene box, these plastic cans were taken out from the bag and sprinkled kerosene and thereafter Bharat had lighted the match and touched to his bush shirt, thus, bush shirt caught fire and his wife Asha had tried to cool the fire using her saree, her saree was also doused with kerosene thus it also burnt, and Gauri had tried to cool using her dupatta, so the dupatta caught fire and she had thrown her dupatta and ran, I was standing at a distance, my family members were burning, I had gone far from there, and Bharat and Girish and Asha and Rekha and Vasumati had got burnt, and they had started to shout and run, I had also started to shout for help, within a few minutes untoward incident had taken place, police and fire-brigade came, mobs of people had gathered, Bharat and Girish and Asha and Rekha and Vasmati were taken in Ambulance to the hospital and myself and Gauriben were taken by the police near the fire brigade and water was sprayed on us and bathed us, thereafter they had taken us to one office there and from there we were taken to the police station, Gauri had lodged the complaint. Chhotunagr Society inhabitants Dushyant and Hareshbhai Society people were harassing for vacating the plot, I do not know the BJB Corporator Rajbha Jhala and Kamleshbhai Mirani. They have never come on our common plot in my presence.

These are my facts and as narrated by me these are true and correct."

5. The learned advocate appearing for the applicants has provided a list of events, which reads as under:-

6. At the end of the investigation, the Investigating Officer thought fit to file a charge-sheet against the applicants herein for the offence under Sections 306, 506 read with Sections 114 and 115 of the IPC. The applicants have challenged the charge-sheet raising the following issues for the consideration of this Court:-

(i) Whether a plain reading of the complaint as a whole constitutes any offence of abetment punishable under Section 306 of IPC?

(ii) Taking the allegations at their face value and other surrounding circumstances, can it be said that the accused persons directly or indirectly abetted the commission of suicide by the deceased?

(iii) In view of the allegations made in the complaint and the evidence collected by the Investigating agency including the dying declarations of the deceased, can it be said that the accused persons aided or instigated the deceased to commit suicide or can it be said that cruelty and harassment even if believed, was with the intention to force the deceased persons to commit suicide?

(iv) Taking the dying declarations as a piece of evidence and reading them as a whole without challenging the veracity of the same, whether it can be said that on account of instigation or aiding or harassment, the deceased committed suicide?

(v) Whether continuation of the prosecution in the facts and circumstances of the case will amount to abuse of process of law and miscarriage of justice?

7. Mr. Hardik Dave, the learned advocate appearing for the applicants vehemently submitted that even if the entire case of the prosecution is accepted as true, no case is made out worth the name to prosecute the applicants and put them to trial for the offence of abetting the commission of suicide. Mr. Dave submitted that as members and office bearers of the Cooperative Society, the applicants were justified in objecting to the illegal construction of the room in the common plot of the Society by the persons who committed suicide. Mr. Dave submitted that they had no right to put up such construction and the Society was highly opposed to such illegal act of the deceased persons. Mr. Dave submitted that even the Municipal Corporation issued notice for demolition of the unauthorised construction under Section 260(1) of the BMC Act. He submitted that the deceased persons had even filed a Civil Suit and in the said Suit also, no relief was granted by the Civil Court in favour of the deceased persons. He submitted that for any unknown reason, if the entire family committed suicide, then by any stretch of imagination it cannot be said that the applicants herein abetted the commission of suicide.

In such circumstances referred to above, Mr. Dave submitted that there being merit in this application, the same be considered and the charge-sheet be quashed.

8. On the other hand, these applications have been opposed by Mr. L.R. Pujari, the Additional Public Prosecutor appearing for the State, and submitted that the materials on record do disclose prima-facie a case for prosecuting the applicants and putting them to trial for the offence under Section 306 of the IPC. He submitted that five persons of the family took the extreme step of dousing themselves with kerosene and thereafter setting themselves on fire. The fact that five persons of the family took such an extreme step would indicate the incessant harassment and instigation on the part of the applicants. He submitted that there being no merit in these applications, the same be rejected.

9. Although the first informant has been served with the notice issued by this Court, she has chosen not to appear either in person or through an advocate.

10. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the charge-sheet filed against the applicants should be quashed.

11. Abetment of suicide is made punishable by Section 306 which provides that "if any person commits suicide, whoever abets the commission of such suicide, shall be punished." (emphasis supplied) The section does not define the expression "abet", nor is the expression defined in Chapter II of the Code which deals with the general explanations". However, Chapter V of the Code incorporates an elaborate statement of "abetment". Section 107 in this Chapter defines "abetment of a thing", while Section 108 defines the expression "abettor". This is how these sections run : Section 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 facilitates the commission thereof, is said to aid the doing of that act."

12. Section 108 - Abettor- "'A person abets an offence, who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor".

Explanation 1.- The abetment of the illegal omission of an act may amount to an offence although the abettor may not himself be bound to do that act.

Explanation 2.- To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Explanation 3.- It is not necessary that the person abetted should be capable by law of committing an offence, or that he should have the same guilty intention or knowledge as that of the abettor, of any guilty intention or knowledge.

Explanation 4.- The abetment of an offence being an offence, the abetment also an offence.

Explanation 5.- It is not necessary to the commission of the offence of abetment by conspiracy than the abettor should concern the offence with the person who

commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed."

13. As the expressions "abetment" and "abettor" have been legislatively defined, the ordinary dictionary meaning of the expressions would not be determinative of their import. It may, however, be useful to have a look at the dictionary meaning of the expression "abet". According to Webster, Webster's Third New International Dictionary Vol. I, the expression "abet", means to incite, encourage instigate, or countenance—now usually used disparagingly. According to Wharton, Wharton's Law Lexicon, 14th ed., "abet" means to stir up or excite, to maintain or patronize : to encourage or set on and the "abettor" is an instigator or setter on, one who promotes or procures a crime to be committed. Stroud, Stroud's Judicial Dictionary, 4th ed., has given various meanings of the expression "aid" or "abet", based on judicial pronouncements in England, in the context of different statutes. Thus, according to Hawkins, 51 L J.M.C. 78-R. v. Coney, J., "To constitute an aider or abettor, some active steps must be taken, by word or action, with intent to instigate the principal or principals. Encouragement does not, of necessity, amount to aiding and abetting. It may be intentional or unintentional. A man may unwillingly encourage another in fact by his presence, by misinterpreted gestures, or by his silence or non-interference—or he may encourage intentionally by expressions, gestures, or actions, intended to signify approval. In the latter case, he aids and abets; in the former he does not." Stroud also cites the case of *Du Cros v. Lambourne*, 1907 (1) K.B. 40. in which it was held that "the owner in, and in control of, a motor car which is being driven at an improper speed by a driver who is not his servant, "aids or abets" in the offence if he (the owner) does not interfere." It is further noticed on the basis of decision in the case of *Rubie v. Faulkner*, 1980 (1) K.B. 571: "For a supervisor of a learner driver to see that an unlawful act is about to be done and to fail to prevent it is he can is for him to aid and abet." It is further noticed, on the authority of the decision in the case of *Callow v. Tillstone*, 83 L.T. 411, that "A man does not by negligence aid and abet a person to expose unsound meat for sale." It is further noticed, on the basis of the decision in the case of *Ackroyds Air Travel v. Director of Police Prosecutions*, 1950 (1) All. E.R. 933 and *Thomas v. Lindop*, 1950 (1) All. E.R. 966, that "If a person knows all the circumstances which constitute the offence he will be guilty of aiding and abetting whether he knew that they did in fact constitute the offence or not " Stroud also quotes Lord Goddard C J. in *Ferguson v. Weaving*, 1951 (1) K.B 814, that "it is well know that the words "aid and abet are apt to describe the action of a person who is present at the time of the commission of an offence and takes some part therein."

14. It may be useful to refer to some of the early English decisions, dealing with different ways of taking part in a felony, it was recognised that a felony may be committed by the hand of an "innocent agent" who, having no blamable intentions in that he did, incurred no criminal liability by doing it. In such a case, the man who "instigates" this agent is the real offender; his was the last mens rea that preceded the crime, though it did not cause it "immediately but

mediately". "Thus, if a physician provides a poisonous draught and tells a nurse that it is the medicine to be administered to her patient, and then by her administration of it the patient is killed, the murderous physician-and not the innocent nurse-is the principal in the first degree Kel. 52 (T.A.C.)." In English Law, as it stood before the later developments, "a principal in the second degree is one by whom the actual perpetrator of the felony is aided and abetted at the very time when it is committed; for instance, a car-owner sitting beside the chauffeur who kills some one by over-fast driving, or a passenger on a clandestine joy-riding expedition which results in manslaughter 1930 (22) Cr, App. R. 70 : 144 L.T. 185, "or bigamist's second "wife" if she knows he is committing bigamy, or even be spectators if they actively encourage such a contest even by mere applause. "But a spectator"s presence at a prize-fight does not of itself constitute sufficient encouragement to amount to an aiding and abetting 1882 (8) Q.B.D. 534." It was also recognised that a man may effectively "aid and abet" a crime and at the very moment of its perpetration, without being present at the place where it is perpetrated. "To be guilty of aiding and abetting, a person must either render effective aid to the principal offender or else must be present and acquiesce in what he is doing. Before a person can be convicted of aiding and abetting the commission of an offence, he must at least know the essential matters which constitute the offence 1951 (1) All. E.R. 412(414)." "But acquiescence sufficient to constitute the offence may be established by evidence of the accused persons motive and of his subsequent conduct 1951 (1) All. E.R. 464."

In the category of "accessory before the fact" comes a person who "procures or advises" one or more of the principals to commit the felony. This "requires from him an instigation so active that a person who is merely shown to have acted as the stakeholder for a prize-fight which ended fatally, would not be punishable as an accessory 1875 (2) C.C.R. 147." "The fact that a crime has been committed in a manner different from the mode which the accessory had advised will not excuse him from liability for it. But a man who has counselled a crime does not become liable as accessory if, instead of any form of the crime suggested, an entirely "different offence is committed 1936 (2) All. E.R. 813." Kenny, Kenny"s Outlines of Criminal Law, New ed. by J.W.C. Turner, p. 88, points out that it is not always easy to decide whether or not the crime actually committed comes within the terms of the "incitement." so as to make the inciter legally responsible for it. He further observed that the courts in some of the older cases tended to "take a strict view of the facts" and refers by illustration to the case of R. v. Saunders, Kel. 52 (T.A.C.) and Archer in 1578. referred to in Plowden.

15. For obvious, reasons an act of suicide is not penal, even though an unsuccessful attempt at it is punishable. Suicide takes the victim or the perpetrator outside the purview of penal consequences, even though the common law in England at one time endeavoured to deter men from this crime by the threat of degradations to be inflicted upon the "suicide"s corpse", which by a natural, if unreasoning association of ideas, were often a "potent deterrent",

and also by threatening the forfeiture of his goods, a "vicarious punishment" which though falling wholly upon his surviving family, was likely often to appeal strongly to his sense of affection. Thus the man who feloniously took his own life was at one time "buried in the highway", with a stake through his body; and his goods were "forfeited". The burial of suicides lost its gruesome aspect in 1824 when the original mode was replaced by the practice of burial "between the hours of nine and twelve at night", without any service. In 1870, the confiscation of the goods of suicides was put to an end in the general abolition of forfeitures for felony. And in 1882, the statute removed every penalty, except the purely ecclesiastical one that the interment must not be solemnised by a burial service in the full ordinary Anglican form, Kenny's Outlines of Criminal Law, New ed. by J.W.C.,, Turner, p. 138.

16. Halsbury, in Halsbury's Law of England, 4th -ed. paras 42 to 44 notices some of the English decisions in the matter of classification of offence and complicity in the crime. Thus, a person who ""assists the perpetrator at the time of its commission, or if he assists or encourages the perpetrator before its commission, was held liable 1970 (2) Q.B. 54." According to R.V. Gregory (1867) L.R.I. C.C.R. 77 "any person who aids, counsel or procures the commission of an offence, whether an offence at common law or by statute, and whether indictable or summary, is liable to be tried and punished as a principal offender." Mere presence at the commission of the crime is not enough to create criminal liability, nor is it enough that a person is present with a secret intention to assist the principal should assistance be required. Some encouragement or assistance must have been given to the principal either before or at the time of the commission of the crime with the intention of furthering its commission. Presence without more may, however, afford some evidence of aid and encouragement. It is an indictable offence at common law for a person to incite or solicit another to commit an offence. For an incitement to be complete, there must be some form of actual communication with a person whom it is intended to incite, where, however, a communication is sent with a view to incite, but does not reach the intended recipient the sender may be guilty of an attempt to incite. Incitement is complete though the mind of the person incited is unaffected and notwithstanding that person incited intends to inform on the inciter; but there can be no incitement unless one person seeks to persuade or encourage another Halsbury's Laws of England, Paras 42 to 44.

17. It may be useful to notice some of the Indian decisions on the question of abetment. Among the early cases of abetment of suicide arose out of unfortunate incidents of Sati, which was common in India, at one time. A person who induced the woman to return to the pyre after she had once retired from it, and immolated herself, was held to have abetted suicide 1863 (1) R.L.P.J. 174. Where a women prepared to commit suicide in the presence of certain persons who followed her to the pyre, stood by her and one of them told the women to say "Ram Ram" and "She would became sati", the facts were held sufficient to prove the active connivance of these persons and to justify the inference that they had

engaged with her in a conspiracy to commit suicide 1871 (3) N.W.P. 316; (1933) A.L.J.R. 7. Where the accused prepared the funeral pyre, placed the victim's husband's body over it, and did not use any force to prevent her from sitting on the pyre and supplied her with ghee which she poured over the pyre were found guilty of abetment of suicide. Where a Hindu women was burnt in the act of becoming sati, those who assisted her in taking off her ornaments, supervised the cutting of her nails and the dying of her feet, prepared the pyre on which she sat herself and put the corpse upon the pyre, were all held guilty of abetment of suicide. The defence that the abettors were in fact "expecting a miracle and did not anticipate that the pyre would be ignited by human agency was rejected, 1928 (8) Pat. 74. Similarly, where the accused, who were members of a crowd, who had joined the funeral procession from the house of the victim to the cremation ground, and were shouting "Sati Mata Ki Jai" it was held that all those persons, who joined the procession were aiding the widow in becoming sati and were guilty of an offence under Section 306 of the Penal Code, *Tejsingh and Others Vs. The State*, .

18. Some later decisions arising out of other instances of instigation throw further light on the question. In the case of *Emperor Vs. Parimal Chatterjee and Others*, , a Division Bench of the Calcutta High Court observed that the word "instigate" literally means to goad or urge forward or to provoke, incite, urge or encourage to do an act. A person may however not only instigate another, but he may co-operate with him and his Co-operation - may consist of a conjoint action and that would amount to abetment. In the case of *State of Bihar Vs. Ranen Nath and Others*, , a Division Bench of the Patna High Court was construing Section 27 of the Industrial Disputes Act which uses the expressions "instigation and incitement" and observed that the words "should be read to signify something deeper than a mere asking of a person to do a particular act. There must be something in the nature of solicitation to constitute instigation or incitement" and it was held that the words seem to convey the meaning "to goad or urge forward or to provoke or encourage the doing of an act." It was further observed that what acts should amount to instigation or incitement within the meaning of that section will depend upon the "particular facts of each case", and that in some circumstances a "throw of a finger" or "a mere turning of the eye" may give rise to an inference of either "incitement or instigation", and yet in others even "strong words, expressly used, may not mean that the person using them was stimulating or suggesting to anyone to do a particular act." The court expressed the view that there must be something "tangible" in evidence to show that the persons responsible for such action were "deliberately trying to stir up other persons to bring about a certain object". According to a division bench of the Calcutta High Court, a person abets the doing of a thing when he or she, inter alia, "instigates any person to do that thing." The other modes of abetment, besides instigation, are "conspiracy and intentional aid". The word "instigation" literally means "to goad or urge forward to do an act." "It is something more than co-operation." In the case of *Shri Ram Vs. The State of U.P.*, , the

Supreme Court observed that in order to constitute abetment, the abettor must be shown to have "intentionally" aided the commission of the crime. "Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107". A person may, for example, "invite another casually or for a friendly purpose and that may facilitate the murder of the invitee". But unless the invitation was extended "with intent to facilitate the commission of the murder", the person inviting cannot be said to have abetted the murder. It is not enough that an act on the part of the alleged abettor "happens to facilitate the commission of the crime". "Intentional aiding and therefore active complicity is the gist of the offence of abetment under the third paragraph of Section 107".

19. In case of suicide how the evidence is required to be appreciated has been stated by the Hon"ble Supreme Court in number of judgments. In State of West Bengal Vs. Orilal Jaiswal and another, , the Hon"ble Supreme 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 appears 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. Further the Hon"ble Supreme Court in case of Chitresh Kumar Chopra Vs. State (Govt. of NCT of Delhi), had an occasion to deal with this aspect of abetment. The Court dealt with the dictionary meaning of the words "instigation" and "goading". The Court opined that there should be intention to provoke, incite or encourage the doing of an act by the latter. Each person's suicidability pattern is different from the other. Each person has his own idea of self esteem and self respect. Therefore, it is impossible to lay down any straitjacket formula in dealing with such cases. Each case has to be decided on the basis of its own facts and circumstances.

20. The Hon"ble Supreme Court in case of Amalendu Pal @ Jhantu Vs. State of West Bengal, , after considering various earlier judgments in para 15 observed that,

"15. 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 their 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."

"16. In order to bring a case within the purview of Section 306 of 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."

21. The Hon'ble Supreme Court in the case of Randhir Singh and Another Vs. State of Punjab, has reiterated the legal position as regards Section 306 IPC which is long settled in para 12 and 13. Para 12 and 13 reads thus:

"12. Abetment involves a mental process of instigation a person or intentionally aiding that person in doing of a thing. In cases of conspiracy also it would involve that mental process of entering into conspiracy for the doing of that thing. More active role which can be described as instigating or aiding the doing of a thing is required before a person can be said to be abetting the commission of offence under Section 306 IPC.

13. In State of W.B. v. Orilal Jaiswal this Court has observed that the courts 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 or ordinary petulance, discord and differences in domestic life quite common to the society to which the victim belongs and such petulance, discord and differences were not expected to induce a similarly circumstances 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."

22. In Gangula Mohan Reddy Vs. State of Andhra Pradesh, the Supreme Court while interpreting Section 306 IPC held that:

"Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing and without a positive act on the part of the accused to instigate or aid in committing suicide, there cannot be any conviction. It was further held that to attract Section 306 IPC there has to be a clear mens rea to commit the offence." 23. In Ramesh Kumar Vs. State of Chhattisgarh, . the Supreme Court held 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. 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."

24. In *Sanju @ Sanjay Singh Sengar Vs. State of Madhya Pradesh*, the deceased committed suicide on 27.7.1998. whereas, the alleged quarrel had taken place on 25.7.1998 when it was alleged that the appellant had used abusive language and also told the deceased to go and die. The Supreme Court in the said circumstances held that the fact that the deceased committed suicide on 27.7.1998 would itself clearly point out that it was not the direct result of the quarrel taken place on 25.7.1998 when it is alleged that the appellant had used the abusive language and also told the deceased to go and die.

25. Taking note of various earlier judgments, in *M. Mohan Vs. The State represented by The Deputy Superintendent of Police*, the Supreme Court held that "Abetment involves mental process of instigating or intentionally aiding a person in doing of a thing. There should be clear mens rea to commit offence under Section 306. It requires commission of direct or active act by accused which led deceased to commit suicide seeing no other option and such act must be intended to push victim into a position that he commits suicide."

26. On a close reading of the above provisions of the IPC, and the principles laid down by the Supreme Court in various decisions, it is apparent that in a case under Section 306 IPC, there should be clear mens-rea to commit the offence under this Section and there should be direct or active act by the accused, which led the deceased to commit suicide, that is to say that there must be some evidence of "instigation", "cooperation" or "initial assistance" by the accused to commit suicide by the victim/deceased.

27. In *Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others*, the Supreme Court observed vide Para 7 that:

"7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilized for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage." It was a proposition relating to

criminal prosecution.

28. In *Madan Mohan Singh Vs. State of Gujarat and Another*, the Supreme Court quashed the proceedings under Section 306 IPC on the ground that the allegations were irrelevant and baseless and observed that the High Court was in error in not quashing the proceedings.

29. Accepting the allegations made against the applicants by the prosecution as it is, they do not constitute the offence of abetment. I am conscious of the fact that five persons of one family lost their lives on account of drastic step taken by them for no reason. It is very difficult to understand the mental state of mind of such persons who take an extreme step of putting an end to their life voluntarily by committing suicide.

30. According to the World Federation for Mental Health (WFMH), a number of countries have established national suicide prevention plans or strategies. Their principles and action steps represent good sources for developing specific policy recommendations to present to governmental and legislative leaders. Common elements of these plans and strategies include:

- Campaigns to increase public awareness of suicide as a preventable problem, to develop broad based support for prevention efforts, and to reduce stigma;
- Community development to support creation and implementation of suicide prevention programs;
- Improved access to services to suicidal people and their loved ones, and improved service delivery efforts through development of guidelines and linkages;
- Media education to improve reporting and portrayals of suicide in the media;
- Training for caregivers to improve recognition of at-risk behaviour and delivery of effective treatments;
- Incorporation of licensing standards for professional caregivers;
- Development and promotion of effective clinical and professional practices;
- Means restriction initiatives to reduce access to lethal means and methods of self harm;
- Research and evaluation to promote and support research, improve surveillance systems, and evaluate the effectiveness of new or existing suicide prevention interventions.

31. In this view of the matter, I am of the opinion that there is absolutely no material on record, sufficient for continuing the criminal prosecution against the applicants. The factual position clearly shows that the criminal proceedings pending against the applicants is nothing, but a sheer abuse of the process of law, which should be quashed by exercising powers under Section 482 of the Criminal Procedure Code. Mere vague allegations of harassment by themselves

would not amount to abatement of the offence of commission of suicide. Something more is required under Section 107 of the IPC. These requisite ingredients are missing in this case.

32. Commission of suicide in the State is at rampage. Everyday, cases are reported. Sometimes, it could be a student or an estranged wife or a frustrated or mentally disturbed husband or it could be a terminally ill person fed-up with the ailment etc. Life is precious and should not be allowed to be lost in this manner. The State owes an obligation to see that its subjects do not take the extreme step of committing suicide for any reason. In such circumstances, the State Government should also seriously consider evolving some action plan or strategies as referred to above.

33. In the result, these applications are allowed. The proceedings of the Sessions Case No. 147 of 2013, pending as on today in the Court of the learned 3rd Additional Sessions Judge, Rajkot are hereby ordered to be quashed. All consequential proceedings pursuant thereto stand terminated. Rule is made absolute.