

TEAM CODE:

SURANA & SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION

3TH – 5TH SEPTEMBER 2016



BEFORE THE HONOURABLE COURT OF SESSIONS

MAVADA

(S.C. No. 101 of 2016)

MEMORANDUM FOR PROSECUTION

IN THE MATTER OF:

State of Jagutar

....PROSECUTION

v.

Abhishek, Angad & Dushyant

.....DEFENCE

***FOR OFFENCES CHARGED UNDER SECTIONS 304 R/W 34, 186, AND 107 OF
THE RABAT PENAL CODE 1860***

**MOST RESPECTFULLY SUBMITTED BY THE
COUNSELS APPEARING ON BEHALF OF PROSECUTION**



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LIST OF ABBREVIATIONS

TERMS	MEANING
§	Section
¶	Paragraph
&	And
A.I.R.	All India Reporter
Annex.	Annexure
Anr.	Another
Art.	Article
CBI	Central Bureau of Investigation
Cl.	Clause
Cr.	Criminal
Cr.P.C.	Code of Criminal Procedure
Cri LJ	Criminal Law Journal
CS	Charge-sheet
DW	Defence Witness
Ed.	Edition
Etc.	Etcetera
Ext.	Exhibit
F.I.R.	First Information Report
Govt.	Government



MEMORANDUM FOR THE Prosecution

LIST OF ABBREVIATIONS

Guj	Gujarat
HC	High Court
Hon'ble	Honourable
i.e.	That is
IO	Investigation Officer
IPC	Indian Penal Code, 1860
Ker LT	Kerala Law Times
Mad	Madras
MANU	Manupatra
MLJ	Madras Law Journal
MP	Madhya Pradesh
No.	Number
Ors.	Others
P&H	Punjab and Haryana
P.	Page
PC	Privy Council
PS	Police Station
PW	Prosecution Witness
r/w	Read with
Raj	Rajasthan
RPC	Rabat Penal Code, 1860



SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
SCW	Supreme Court Weekly
Sd/-	Signed
Supp.	Supplementary
u/s	Under Section
UOI	Union of India
v.	Versus
Viz.	Namely



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4.	<i>Amar Nath</i>	I.L.R. 5 All 318	14
5.	<i>Bakshish Singh v. State of Punjab</i>	A.I.R. 1971 SC 2016	2
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7.	<i>Barendra Kumar Ghosh v. King Emperor</i>	A.I.R. 1925 PC 1	5
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9.	<i>Chahat Khan v. State of Haryana</i>	A.I.R. 1972 SC 2574	4
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25.	<i>Inder Singh Bagga Singh v. State</i>	A.I.R. 1955 SC 439	1
26.	<i>Iqbal Singh Marwah v. Menakshi Marwah</i>	A.I.R. 2005 SC 2119	15
27.	<i>Jain v. R</i>	A.I.R. 1943 Pat 82	13
28.	<i>Jamuna Singh v. State of Bihar</i>	A.I.R. 1967 SC 553	9
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42.	<i>Maqsoodan v. State of U.P.</i>	1983 Cri LJ 219 (SC)	5
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44.	<i>Mulakh Raj v. Satish Kumar</i>	A.I.R. 1992 SC 1175	2
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73.	<i>State of M.P. v. Desh Raj</i>	(2004) 13 SCC 199	6
74.	<i>State of Maharashtra v. Kalu Shrinivasam</i>	A.I.R. 1980 SC 879	8
75.	<i>State of Maharashtra v. Meyer Hans George</i>	A.I.R. 1965 SC 722	3



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5. J.K.Soonavala, '*Supreme Court Criminal Digest (1950-2010)*',(5th Edn. 2011) Lexis Nexis Butterworths Wadhwa,Nagpur, Vol. 1-4
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**STATEMENT OF JURISDICTION**

The Prosecution Counsels in the present case, State of Jagutar, hereby most respectfully submits that this Hon'ble Court of Sessions at Mavada, Jagutar has applicable jurisdiction in *S.C. No.101 of 2016*, under § 177 read with § 209 of the Code of Criminal Procedure, 1973. The Counsels on behalf of the Prosecution hence avail the honour of submitting before the Hon'ble Sessions Judge, their memorandum so as to prove the guilt of the accused upon them not pleading guilty. This document sets forth the facts, charges and corresponding arguments of the instant case. The Prosecution affirms that it shall accept any Judgment of the Court as final and binding upon itself and shall execute it in its entirety and in good faith.

All of which is respectfully submitted

By:

Counsels for the Prosecution

Place: Mavada, Jagutar.

**STATEMENT OF FACTS****[A] BACKGROUND:**

Mr. Abhishek and Mr. Angad are students of the Presidency College pursuing their master's in Political Administration. They belong to the Lepat community which is considered to be backward in the State of Jharkhand. Mr. Abhishek, the student union leader of the College is politically active and aims to be a political leader. The union is affiliated to the Collective Party of Jharkhand which is in alliance with the opposition party. Because of this, he was involved in frequent altercations with student members of rival parties.

[B] RELEVANT FACTS:

Unsurprisingly, one evening Mr. Abhishek and Mr. Angad harassed and threatened Mr. Dinesh, the son of an MLA of the ruling party. They even went to the extent of pelting stones at Dinesh and Peter and warned of dire consequences if they were seen anywhere near the College. The series of incidents compelled Mr. Dinesh to inform about the same to Mr. Amit Chaudhary who is an Inspector of Police. Abhishek and Angad did a background check on Mr. Amit Chaudhary and came to know that he was associated with the ruling party. They also consulted one Mr. Dushyant and discussed about the same. Mr. Dushyant, infuriated by the finding instructed Abhishek to murder Mr. Chaudhary. He also advised Abhishek to not be afraid and assured that he would have the support and protection of the party. Thus, in pursuance of the plan to kill Mr. Amit Chaudhary and also encouraged by the words of Dushyant, Abhishek went further ahead and browsed legal provisions relating to self-defence.

[C] EVENTS THAT UNFOLDED THE COMMISSION OF THE ALLEGED CRIME:

On 17th of April 2016, when the complainant was having tea, the accused as usual began to pelt stones and started to harass and threaten Dinesh. Mr. Amit Chaudhary, who was in the vicinity, intervened and sought to bring the situation under control. Abhishek, sensing the opportunity picked up a metal rod that was lying on the roadside and inflicted a fatal blow on the head of the deceased. Upon post-mortem examination, the cause of death was identified as haemorrhage triggered by a blow on the head.

**STATEMENT OF CHARGES**

The Prosecution, State of Mavada, most respectfully asks this Hon'ble Court of Sessions at Mavada, Jagutar to consider the following charges as framed by it in accordance with Chapter XVII of the Code of Criminal Procedure, 1973:-

CHARGE I:

Mr.Abhishek (*Accused I*), Mr.Angad (*Accused II*), and Mr.Dushyant (*Accused III*) committed culpable homicide not amounting to murder in furtherance of common intension punishable under § 304 read with §34 of the Rabat Penal Code, 1860

CHARGE II:

The first, second and third accused are liable under § 186 of Rabat Penal Code, 1860 for obstructing the public servant from discharging his public function.

CHARGE III:

The Second, and third accused are liable under § 107 of Rabat Penal Code, 1860 for abetting Accused I to commit the crime.

**LIST OF WITNESSES**

<u>PROSECUTION</u>	
NAME OF WITNESS	WITNESS NUMBER
Dr. Kalra	PW1
Dr. Russell, <i>Pathologist(Forensics)</i>	PW2
<i>Mr.Hardik Bhatia</i> - Investigation Officer	PW3
Dinesh (<i>Complainant</i>)	PW4
Peter	PW5
Jatin	PW6
<u>DEFENCE</u>	
NAME OF WITNESS	WITNESS NUMBER
Mr. Abhishek	DW1
Mr. Angad	DW2
Mr. Dushyant	DW3
Ms. Tanya	DW4
Ms. Natasha	DW5



LIST OF DOCUMENTS

DOCUMENT NO.	DOCUMENT DESCRIPTION	DATE OF DOCUMENT
Annex 1	<i>First Information Report</i>	7 th April 2016
Annex 2	<i>Panchnama/Mahazar</i>	7 th April 2016
Annex 3	<i>Post Mortem Report of Mr.Amit Chaudhary</i>	8 th April 2016
Annex 4	<i>Forensic Report</i>	8 th April 2016
Annex 5	<i>Statement of Witness</i>	-
Annex 6	<i>Report of the Investigation Officer U/s 173 of the Cr.P.C.</i>	14 th April 2016

**LIST OF MATERIAL OBJECTS**

Exhibit.	DESCRIPTION
Ex. 1	<i>Picture of the Holster carrying the gun of the victim</i>
Ex. 2	<i>Metal rod</i>
Ex. 3	<i>Picture of the Stump of the tree on the pavement</i>
Ex. 4	<i>Internet Browsing made by Abhishek on his Personal Computer</i>
Ex. 5	<i>Call Transcripts between all the accused</i>

**SUMMARY OF ARGUMENTS**

ISSUE 1: WHETHER MR. ABHISHEK (FIRST ACCUSED A-1), MR. ANGAD (SECOND ACCUSED A-2), AND MR. DUSHYANT (THIRD ACCUSED A-3) ARE LIABLE FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER IN FURTHERANCE OF COMMON INTENTION PUNISHABLE UNDER S.304 R/W S. 34 OF THE RABAT PENAL CODE 1860

Accused Mr. Abhishek, Mr. Angad, and Mr. Dushyant are liable to be punished under § 304 as their deliberate and pre-meditated act has caused the death of the deceased. Accused had full knowledge that their acts would result in Mr. Amit Choudhury's death. The accused killed the deceased on the orders of his leader who resented the deceased and browsing various provisions regarding self-defence to hatch a perfect plan establishes mens rea. All the circumstances are pointing towards nothing but the guilt of the accused. Therefore the accused are liable to be punished under § 304 r/w § 34 of RPC.

ISSUE 2: WHETHER OR NOT THE ACTS OF MR. ABHISHEK (FIRST ACCUSED A-1), MR. ANGAD (SECOND ACCUSED A-2), AND MR. DUSHYANT (THIRD ACCUSED A-3) ACTED IN FURTHERANCE OF THEIR COMMON INTENTION DEFINED UNDER S. 34 OF THE RPC.

The accused had committed the illegal act in furtherance of a common intention. Conduct of the Accused impliedly suggests the existence of an agreement and preparation. The existence of pre-arranged plan was sufficient to show that accused had acted only in furtherance of common intention. That direct evidence is extremely rare to find in criminal conspiracy thus in the present case it was clear from the ocular witness as to the mode of execution by the accused. Doctrine of joint liability operates against the A-1, A-2 with A-3. Thus it was clear that the accused had acted only in furtherance of the common intention and committed the crime.

ISSUE 3: WHETHER OR NOT A-2 AND A-3 ARE LIABLE FOR ABETTING THE KILLING OF MR. AMIT CHOUDHURY U/S 107 OF RPC.

A-2, A-3 are the principal in the second degree, who instigated the crime. A-2 has aided A-1 in committing the said act and also abetted him to commit such act. 3.1.1 Any possible lacunae in documentation is trivial and justifiable. Any challenge against the F.I.R is not legally sustainable. There exists abetment by conspiracy. The evidence at hand is consistent with the guilt of A-2 and A-3. Tape recorded conversation is res gestae and admissible as evidence. Transcripts



of such tape recorded conversation is admissible as evidence. Thus the accused are liable for abetting the killing of the deceased.

ISSUE 4: WHETHER OR NOT THE DEFENCE CAN TAKE THE PLEA OF RIGHT OF PRIVATE DEFENCE UNDER § 96 - § 106 OF THE RPC.

Right of private defence is not an absolute right. That if there is sufficient time for recourse to the public authorities, the right is not available. That more harm than necessary should not be caused. That there must be a reasonable apprehension of Death or of Grievous Hurt to the person or damage to the property concerned. Non-explanation of injuries by prosecution is not fatal to prosecution's case. Anticipatory or pre-emptive self-defence is not a defence under § 96 of RPC

ISSUE 5: WHETHER THERE HAS BEEN ANY OBSTRUCTION OF PUBLIC SERVANT FROM DISCHARGING HIS PUBLIC FUNCTIONS.

Voluntary obstruction of public servant. The accused had obstructed while discharging his public function. The accused had Mens rea to commit such obstruction. Conditions Requisite for Initiation of Proceedings are satisfied.



WRITTEN PLEADINGS

“A miscarriage of justice which may arise from the acquittal of the guilty is not less than from a conviction of an innocent.”

-Ganguly .J

ISSUE 1: WHETHER MR. ABHISHEK (first accused A-1), MR. ANGAD (second accused A-2), AND MR. DUSHYANT (third accused A-3) ARE LIABLE FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER IN FURTHERANCE OF COMMON INTENTION PUNISHABLE UNDER S.304 R/W S. 34 OF THE RABAT PENAL CODE 1860

The prosecution most respectfully submits, that the facts and circumstances of the present case and the conduct of the accused and the co-accused clearly establishes their guilt.

The accused Mr. Abhishek, Mr. Angad and Mr.Dushyant are liable to be punished under § 304 as their deliberate and pre-meditated act has caused the death of the deceased. Accused had full knowledge that the acts would result in the death of Mr. Amit Choudhury. The Supreme Court held¹ where the accused, a college student, inflicted one blow with “*kassi*” on head of the victim, who died due to injury stated that “Merely because the blow landed on a particular sport on the body divorced from the circumstances in which the blow was given it cannot be said that the accused intended to cause the particular injury. Sufficiency of injury to cause death in the ordinary course of nature has to be determined objectively and is unrelated to the intention of the offender.”²

The accused herein have been confronted by Amit Choudhury on previous occasions. The accused approached their senior party leader Mr. Dushyant (A-3), a leader in the opposition party for help, who was then instigated A1 and A2 to kill deceased for the reason of his affiliation to the ruling party. Where the accused could be attributed the knowledge that the natural and proper consequences of their acts was likely to cause death, the proper provisions to be applied was held to be § 304.³

Additionally, it is submitted that to constitute an offence under the second part of Sec.304, there must be a common intention to do an act with the knowledge that it is likely to cause death though

¹ *Randhir Singh v. State, A.I.R. 1994 SC 1552*

² *Inder Singh Bagga Singh v. State, A.I.R. 1955 SC 439*

³ *Ruli Ram v. State, (2002) 7 SCC 691*



without the intention of causing death. Each of the assailants know that the act they are jointly doing is one that is likely to cause death but may have no intention of causing death, and yet, they may have the common intention to do that act.⁴ This clearly establishes *mens rea* on the part of A3. Further A1 had made a background check on Mr. Amit Choudhary and also browsed provisions as regards to self-defense and other criminal provisions. It is humbly contended that all the circumstances unerringly point towards the guilt of the accused.

1.1 Accused Mr. Abhishek (A-1), Mr. Angad (A-2), and Mr. Dushyant (A-3) are liable to be punished under § 304 as their deliberate and pre-meditated act has caused the death of the deceased.

It is not for the prosecution to meet any and every hypothesis suggested by the accused howsoever extravagant and fanciful it might be⁵. The counsel submits that the circumstantial evidence in the instant matter shows that within all human probability, the act had intentionally killed the deceased.⁶ It is evident from the testimony of the witness that there is no other possible reason for the deceased's death other than the acts of the accused. When the direct evidence is well corroborated by the circumstantial evidence and conforms to the probabilities, there is no reason why it should not be accepted.

The intention to kill can be inferred from the acts of the accused⁷. It should be noted that that absence of motive is no ground for dismissing the case. Motive is immaterial so far as the offence is concerned, and need not be established⁸ as the mere existence of motive is by itself, not an incriminating circumstance⁹, absence of proof of motive, does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case and is not fatal as a matter of law¹⁰.

Motive is a psychological phenomenon, merely because the prosecution could not translate that mental disposition of the accused into evidence does not mean that no such mental condition

⁴ *Adam Ali Taluqdar v. State*, A.I.R. 1927 Cal 324

⁵ *State of UP v. Ashok Kumar Srivastava*, A.I.R 1992 SC 840

⁶ *Bakshish Singh v. State of Punjab*, A.I.R 1971 SC 2016

⁷ *Laxman v. State of Maharashtra*, A.I.R 1974 SC 1803

⁸ *Ratanlal and Dhirajlal, The Indian Penal Code*, 33rd Ed. (2011)

⁹ *State of Punjab v. Sucha Singh*, A.I.R 2003 SC 1471

¹⁰ *Mulakh Raj v. Satish Kumar*, A.I.R 1992 SC 1175



existed in the mind of the accused¹¹. Thus it is contented that the accused is guilty for the offence of culpable homicide not amounting to murder, given that the requisite *mens rea* and *actus reus* is established from the facts of the case, beyond a reasonable doubt.

1.2. Accused had full knowledge that their acts would result in Mr. Amit Choudhury's death.

The mere knowledge that natural and probable consequences of an act would be death is sufficient ground for awarding a conviction under Sec. 304 of IPC.¹² The accused herein is the student union leader of a very prestigious institution. On 28 March 2016, the accused herein were standing in a bus stop near their college, when two other students, one of them being the complainant herein confronted them near the bus stop, they retaliated with stones. Thereafter, on 30 March 2016, when the deceased herein approached the accused, they disrespected the police officer and even threatened him. Following which, they had approached various people for help, and even browsed the internet regarding various criminal provisions including self-defence¹³.

Enriched with courage installed by various leaders and knowledge apropos self-defense, A1 and A2 staged an act on 7 April 2016. A1 and A2 intentionally attacked Mr. Amit Choudhury with an Iron Rod which was kept in a shop and now take up a bogus defense of committing the act in Self Defense. The force of the hit on the deceased's head triggered a hypovolemic Shock which resulted in the death of Mr. Amit Choudhury. Since the most probable cause of the acts of the accused is death, they are liable to be punished for Culpable Homicide.

1.3 The accused killed the deceased on the orders of his leader who resented the deceased and browsing various provisions regarding self-defense to hatch a perfect plan establishes mens rea.

Mens rea is considered as guilty intention¹⁴, which is proved or inferred from the acts of the accused.¹⁵ The intention to kill can be inferred from the culpable homicide not amounting to

¹¹ *Nathuni Yadav And Ors vs State Of Bihar And Anr* , A.I.R 1996 SC 1093

¹² *Santosh v. State of Madhya Pradesh*, 1975 Cri LJ 602 (SC)

¹³ *Casedata*, Annx. Pg. 6, 15

¹⁴ *Commissioner of Income Tax v. Patranu Dass Raja Ram Beri*, A.I.R 1982 PH 1,4

¹⁵ *State of Maharashtra v. Meyer Hans George*, A.I.R 1965 SC 722



murder and nature of the injuries caused to the victim.¹⁶ It is most evident from the circumstances that the accused has intended the result of his actions. It is presumed that every sane person intends the result that his action normally produces and if a person's deliberate acts causes death of another, the intention of the accused can be no other than to take the life of the victim and the offence committed amounts to culpable homicide not amounting to murder¹⁷. Moreover, it is pertinent to note that heinous offences have been committed for very slight motive¹⁸.

In the present case, the accused, who would do anything for political supremacy and power conspired together to commit an offence under Sec.304. The facts of the case further indicates that they also confronted the complainant Mr. Dinesh as he his father was a ruling party MLA. Sheer Enmity on the basis of political differences and conflicts is to be condemned by the eyes of law. Since intention is always a state of mind, it can be proved only by the external manifestations.¹⁹ Therefore, in the present case, all the acts of the accused manifest the intention to kill the deceased.

1.4 All the circumstances are pointing towards nothing but the guilt of the accused.

In the present case, all the circumstances points towards the guilt of the accused. § 8 of Rabat Evidence Act stipulates that any fact is relevant which shows or constitutes motive or preparation for any fact in issue or relevant fact.²⁰ All the incidents link to the chain of circumstances which connect the accused to the crime²¹. When the circumstantial evidence on record is sufficient to prove beyond any doubt to prove that it was the accused and no one else, who intentionally caused the death of the accused, then those circumstances on themselves turns out to be the strongest evidence against the accused²².

2. WHETHER OR NOT THE ACTS OF A-1, A-2 AND A-3 ACTED IN FURTHERANCE OF THEIR COMMON INTENTION DEFINED UNDER S. 34 OF THE RPC

¹⁶ *Laxman v. State of Maharashtra*, A.I.R 1974 SC 1803

¹⁷ *Sadhu Singh Harnam Singh v. State of Pepsu*, (1951) 3 Pepsu LR 635

¹⁸ *State v Dinakar Bandu* (1969) 72 Bom LR 905

¹⁹ *Chahat Khan v. State Of Haryana* A.I.R1972 SC2574

²⁰ *Son Lal v State of Uttar Pradesh*, A.I.R 1978 SC 1142, *Chhotka v State of W.B.*, A.I.R 1958 Cal 482

²¹ *State of Madhya Pradesh v. Digvijay Singh*, 1981 Cri. LJ 1278 (SC)

²² *Hari Singh v State of Rajasthan*, A.I.R 1997 SC 1505



It is contended that the accused had the common intention to commit the crimes in order to attain their common object of getting rid of Mr. Amit Choudhury.. In such a situation S.34 provides for each to be liable for the entire act as a whole. The major elements that are required to be proved while proving an individual's liability under S.34 of the IPC include the commission of an illegal act by several persons and that such an act was done in the furtherance of the common intention.

2.1 THERE WAS THE COMMISSION OF AN ILLEGAL ACT IN FURTHERANCE OF A COMMON INTENTION BY THE ACCUSED

In the present case the accused shared the common intention to kill the deceased and under § 34 of Rabat Penal Code, acts done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone²³.

The Privy Council in the landmark decision of *Barendra Kumar Ghosh v. King Emperor*²⁴ while exploring the contours of Sec.34 and underlined that the gravamen of common intent lies in the sharing of a single intent by all persons. The said facet of Sec.34 was reaffirmed by the criminal courts of Rabat in a catena of decisions²⁵. The Prosecution humbly contends that Sec.34 lays down the principle of joint criminal liability on the account of guilty intent²⁶ and an overt act²⁷. Criminal act done by all or one of them in furtherance of the common intention of all would suffice to convict all the people.²⁸ In most circumstances, proof of common intention has to be inferred from the act or conduct or other relevant circumstances of the case at hand²⁹

In order to bring a case under § 34 of the Indian Penal Code it is not necessary that there must be a prior conspiracy or pre-meditation, the common intention can be formed in the course of the occurrence.³⁰ The court should come to a definite conclusion that the said person had prior concert with one or more other persons, named or unnamed, for committing the said offence³¹.

²³ *Parasa Raja v. State of A.P.*, A.I.R. 2004 SC 132; *Girija Shankar v. State of U.P.*, A.I.R. 2004 SC 1808;

²⁴ A.I.R. 1925 PC 1

²⁵ *Rotash v. State Of Rajasthan*, 2006(13)SCALE 186; *Lallan Rai & Ors v. State Of Bihar*, A.I.R. 2003 SC 333

²⁶ *Sarjoo v. State of U.P* A.I.R. 1961 SC 631; *Dir. of Enforcement v. MCTM Corpn. Pvt. Ltd.*, A.I.R.1996 SC1100

²⁷ *Chikkarange Gowda*, (1956) Mys 377, SC; *Shaik Nawab v. State of Maharashtra*, A.I.R. 1993 SC 169

²⁸ *State of UP v. Iftikhar Khan*, 1973 Cri LJ 636 (SC); *Surjit Singh v. State of Punjab*, 1983 Cri LJ 1111 (SC);

²⁹ *Maqsoodan v. State of U.P.*, 1983 Cri LJ 218 (SC)

³⁰ *Hari Om v. State of Uttar Pradesh*, 1993 Cri.L.J. 1363 (SC).

³¹ *Sankaran Nair v. State of Kerala*, A.I.R. 1965 Ker.248; *Tehal Singh v. State of Punjab*, A.I.R. 1979 SC 1347.



2.1.1 Conduct of the Accused impliedly suggests the existence of an agreement

The scrupulous perusal of the accused(s) conducts in conjunction, leads to a clear implication that there was existence of a conspiracy in the present matter. The Hon'ble Apex Court has held that, for an offence under § 34, the prosecution need not necessarily prove that the perpetrators expressly agreed to do or cause to be done the illegal act; the agreement may be proved by necessary implication."³²

2.1.2 Conduct of the Accused are relevant to conclude that there is preparation

The Supreme Court in a landmark judgment³³, observed that the common intention while supposing a prior concert and a pre-arranged plan may be inferred from the surrounding circumstances and the conduct of the parties, which need not be an elaborate one.³⁴ It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar³⁵. Intent can also be reasonably inferred from the conduct of the accused³⁶ and the totality of circumstances.³⁷ The consensus of mind of persons, to bring about certain result, having criminal propensity is an essential ingredient in S.34³⁸ In such a situation S.34 provides for each to be liable for the entire act as a whole.³⁹

Common intention also means a desire to commit a criminal act without any contemplation of offence⁴⁰. It deals with doing of several acts, similar or diverse in furtherance of common intention⁴¹.

The prosecution humbly contends that in the immediate matter, the circumstances undeniably point towards existence of a pre-arranged plan on part of the accused to make the killing appear as one of self-defence. Therefore, tested on the touchstone of these principles and corroborated

³² *Mohammad Usman Mohammad Hussain Maniyar and others v. State of Maharashtra*, 1981 (2) SCC 443

³³ *Rishideo Pande v. State of U.P.*, A.I.R. 1955 SC 331.

³⁴ *Bhopal Singh v. State of Rajasthan*, A.I.R. 1968 Raj 305

³⁵ *Narkami Deva v. State of Chhattisgarh*, 2009 (78) A.I.C. 530 (Chatt).

³⁶ *Harshadsingh Pahelvansingh Thakore v. St. of Gujarat*, A.I.R. 1977 SC 710

³⁷ *Sen v. State of West Bengal*, 1978 Cri. LJ 481 (SC); *Sivam v. State of Kerala*, 1978 Cri. LJ 1609 (SC);

³⁸ *Aizaz v UP*, (1998) 4 Cri LJ 4374 (SC)

³⁹ *Dhansai v. State of Orissa*, A.I.R. 1969 Ori 105

⁴⁰ *Akanda v. Emperor*, A.I.R. 1944 Cal 339

⁴¹ *State of M.P v. Desh Raj*, (2004) 13 SCC 199



with the testimony of the witnesses, it is most humbly submitted that the accused A-1, A-2 and A-3 are guilty of common intention under § 34 of the Rabat penal code.

2.1.3 That Direct Evidence Is Extremely Rare To Find In Criminal Conspiracy

The Hon'ble Supreme Court has laid down that because of the difficulties in having direct evidence of criminal conspiracy once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then, anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to § 10 of the Evidence Act, relevant for proving both conspiracy and the offences committed pursuant thereto.⁴²

2.2 Doctrine of joint liability operates against A-1, A-2 with A-3

It is most humbly contended that § 34 of RPC deals with the cases wherein all accused persons are principals whereas § 107 deals with law of abetment. An abettor is a person, who does not himself commit a crime but aids, instigates or encourages another person to commit a crime. Therefore the joint criminals are directly liable equally for their joint crime.⁴³

ISSUE 3: WHETHER OR NOT A-2 AND A-3 ARE LIABLE FOR ABETTING THE KILLING OF MR. AMIT CHOUDHURY U/S 107 OF RPC

It is humbly placed before the Hon'ble Court that a person is said to abet a crime when he instigates [2.1], conspires [2.2] and intentionally aids [2.3] the commission of the crime. Abetment under the penal code involves active complicity on the part of the abettor at a point of time prior⁴⁴ to the actual commission of the crime, and it is an essential⁴⁵ that the abettor of the crime must assist the principal culprit towards the commission of the crime⁴⁶. It is a separate and a distinct offence.⁴⁷ A-3 in his statement had conceded the A-1 came to meet him one day and sort his opinion to which he gave direction as to how to handle bullies. A-3 being a political

⁴² *Noor Mohammad v. State of Maharashtra*, 1971 Cri. LJ 793;

⁴³ *Noor Mohammad Mohd v. State*, A.I.R. 1971 SC 885

⁴⁴ *Faguna Kanta Nath v State of Assam*, A.I.R. 1959 SC 673S

⁴⁵ *Sri Ram v State of U.P.*, A.I.R. 1975 SC 175

⁴⁶ *Subash Chandra Bebartta v State of Orissa*, 1974 Cri LJ 217 (ORI)

⁴⁷ *Trilok Chand Jain v State of Delhi*, A.I.R. 1977 SC 666



leader should have advised them that not to take the things in wrong way but instead he himself had calls a police officer as bully. Abetment is constituted by:-

1. Instigating a person to commit an offence⁴⁸.
2. By engaging in a conspiracy to commit it.
3. By intentionally aiding a person to commit it⁴⁹.

3.1 A-2 and A-3 are the principal in the second degree, who instigated the crime

It is submitted that A2 and A3 are liable for abetment by instigation under § 107, where one person is urged forward by a person who will not himself act, but who procures or instigates another to put in execution his criminal intention⁵⁰.

The first clause of Sec. 107 is applicable in the immediate matter which reads as: *Instigates any person to do that thing*. The accused A-3 instigated his friend and co-accused Abhishek to kill the deceased and has also assured him and advised him in this regard. For constituting offence of abetment, intentional and active participation by the abettor is necessary⁵¹

This form of abetment depends upon the intention of the person who abets, and not upon the act, which is actually done by the person whom he abets⁵². Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart. It is a settled provision of law that what constitutes “instigation” depends upon facts of each case and must not be viewed or tested in isolation. Thus, if the entire circumstances of the case are looked at as a chain of events than the key role of A-3 as an abettor cannot go unnoticed.⁵³

Even advice may become an instigation if it is found that it is an advice which is meant actively to suggest or stimulate the commission of an offence⁵⁴

3.1.1 Any possible lacunae in documentation is trivial and justifiable

⁴⁸ *Brijlal v Premchand*, A.I.R. 1989 SC 1661

⁴⁹ *Sanju v State of Kerala*, A.I.R. 2001 SC 175

⁵⁰ *State of Maharashtra v. Kalu Shrinivasam*, A.I.R. 1980 SC 879

⁵¹ *Kulwant Singh v. State of Punjab*, (2007) 15 SC 670

⁵² *La Aung* (1906) 12 Burma LR 70

⁵³ *Barendra Kumar Ghosh v King Emperor* A.I.R. 1925 PC 1

⁵⁴ *Raghunath Dass v Emperor* A.I.R. 1920 Pat 502.



The Apex Court⁵⁵ relying on *Karnel Singh v. State of M.P.*⁵⁶ held the accused not to be acquitted due to defective investigation. Despite lacunae in investigation, the court admitted the testimonies of witnesses which proved the guilt of the accused beyond fair doubt.

3.1.2 Any challenge against the F.I.R. is not legally sustainable

According to *Baldev Singh v. State of Punjab*⁵⁷ the FIR is only relevant in judging the veracity of the prosecution case and the value to be attached to it depends on the facts of each case. Only the broad picture need be stated in the FIR and all minute details need not be mentioned therein.

3.2 There exists abetment by conspiracy

In order to constitute the offense of abetment by conspiracy, there must be a combining of two or more persons and an illegal act or omission must also take place in pursuance of conspiracy⁵⁸. Conspiracy can be proved by circumstantial evidence⁵⁹ even if the accused is not present at the place of commission of the crime⁶⁰. The prosecution humbly submits that the accused A-2, A-3 conspired together in abetting the crime. The offense is complete as soon as the abettor has incited another to commit a crime, the consent is immaterial, and rather it is the intention of the person who abets the commission of the act.⁶¹ It is not necessary for the offence of abetment that the act abetted must be committed⁶². Hon'ble Supreme Court has held⁶³ that the offence of abetment is a separate and independent offence and the guilt of accused does not depend upon the guilt of the principal, nor on the actual commission of the alleged offence.

3.2.1 The evidence at hand is consistent with the guilt of A-2 and A-3

⁵⁵ *Dr. Kishan Pal & Anr. v. State of U.P.* 1996 SCC (Cri.) 249

⁵⁶ A.I.R 1995 SC 2472

⁵⁷ A.I.R 1996 SC 372; vide *Sunil Kumar & Anr v. State of Haryana*, A.I.R 2012 SC 2488

⁵⁸ *Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar*, 1962 A.I.R. SC 876.

⁵⁹ *Noor Mohammad Yusuf v. State of Maharashtra*; 1971 A.I.R. SC 885.

⁶⁰ *Rajinder Kumar v. Secretary, Delhi Administration*, 1985 A.I.R. SC 1805.

⁶¹ *Ramabatar Agarwalla v. State*, 1983 Cri LJ 122

⁶² *Gurbachan Singh v Satpal Singh* A.I.R. 1990 SC 209

⁶³ *Jamuna Singh v. State of Bihar*, A.I.R. 1967 SC 553.



As reiterated⁶⁴ the circumstances taken cumulatively, cogently and firmly establishes and possesses a definite tendency unerringly pointing towards guilt of A-2 and A-3. Based on the facts and evidence, the guilt of the accused is proved beyond all reasonable doubt.

3.3 Abetment by Intentional Aiding

Intentional aiding means to help, assist or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about or to encourage, counsel or incite as to its commission⁶⁵. The acts of the A-2 and A-3 amounted to encouragement of the accused A-1 in committing the crime as Mr. Amit was killed after A-2 and A-3 had abetted by encouraging him. The prosecution humbly contends that the ingredients under s. 107 of RPC are attracted and hence the accused are liable to be punished under the same.

3.3.1 Tape recorded conversation is res gestae and admissible as evidence

It has been held in *R.M Malkhani v. State of Maharashtra*⁶⁶ held that the tape-recorded conversation is a relevant fact under § 8 of the Evidence Act and is admissible under § 7 of the Evidence Act. The tape-recorded conversation is not within the vice of § 162 of Cr.P.C.⁶⁷

3.3.2 Transcripts of such tape recorded conversation is admissible as evidence

As per § 17 of the Rabat Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to also to be a document and is permissible in Court. It is humbly submitted that all those statement are recorded from the appropriate authorities. Therefore they can be relied upon as evidence.

ISSUE 4: WHETHER OR NOT THE DEFENCE CAN TAKE THE PLEA OF RIGHT OF PRIVATE DEFENCE UNDER § 96 - § 106 OF THE RPC

It is humbly submitted before the Hon'ble Court that the defence cannot take the plea of Self-defence as envisaged from S.96-S.106 of the Indian Penal Code. The plea of right of private defence cannot be based on surmises and speculations. Under § 105 of the Rabat Evidence Act

⁶⁴ *Ujagar Singh v. State of Punjab*, (2007) 13 SCC 90

⁶⁵ *Vajruben & Ors v. State of Gujarat*, 2015 (III) CCR 34.

⁶⁶ 1973 A.I.R 157

⁶⁷ *N. Srirama Raddy v. Shri V. V. Giri* [1971] 1 S.C.R 399; *S. Pratap Singh v. State* [1964] 4 S.C.R. 733



the burden of proof is on the accused who takes the plea of self-defence and in the absence of proof it is not possible for the court to presume the truth of the plea of self-defence.⁶⁸

It is humbly submitted that the right given under S.96-98 and 100-106 of the Rabat Penal Code is controlled by S.99. To claim a right of Right to Private Defence extending to the extent of voluntary causing death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that either death or grievous hurt would be caused to him.⁶⁹ The protection extends even to acts which will not be strictly justifiable by the law.⁷⁰

The execution contained in the first paragraph of S.99 of the Rabat Penal Code applies where a public servant acts irregularly in the exercise of his powers⁷¹ and not where he acts outside the scope of his powers⁷². In arguendo, the deceased did confront the accused in a manner which is not strictly justifiable by law, he was within his jurisdiction in as much as he tried to maintain public serenity by apprising them to not throw stones. The words “under colour of office” refers to irregular as distinguished from illegal acts. They show that the act was within the jurisdiction but that the jurisdiction had been exercised irregularly or on insufficient grounds⁷³. It is humbly submitted that the action of the Inspectors did not become vitiated by bad faith simply for the reason that there had been no prior notice.⁷⁴ A public servant acting in good faith, even if he may not be acting strictly in accordance with law, does an act, it cannot said to be illegal.⁷⁵

4.1 Right of private defence is not an absolute right

S.99 of the Rabat Penal Code is designed to protect a public servant, and to limit the amount of resistance which may be offered to him. The word “strictly” in this section has been deliberately inserted by the legislature to show that this section was not intended to apply to cases where the

⁶⁸ *Sekar @ Rajshekaran*, 2003 Cri LJ 53 (SC)

⁶⁹ *Sadhu Singh v. State of Punjab*, 2009 (78) A.I.C.73 at p.75 (S.C)

⁷⁰ *Kanwar Singh v. Delhi Administration* A.I.R. 1965 S.C. 871 at pp.875, 876.

⁷¹ *State v. Yamanappa Limbaji*, 58 Bom.L.R.551.

⁷² *Deoman Shamji Patil v. State*, A.I.R 1959 Bom.284 at p.286; 61 Bom. L.R.30 : 1959 Cr.L.J.825

⁷³ *Juseph Varky v. State of Kerala*, (1964) 1 Cri. LJ .592 at pp.595, 596.; *Ganpathi Pillai, In re*, A.I.R 1953 Mad.936 at p.937; 1953 Cr.L.J.1730

⁷⁴ *Aruja Sahu v. State*, (1965) 31 Cut.L.T.851 at p.856

⁷⁵ *Rewati Raman Prasad Sinha v. State of Bihar*, (1979) B.L.J



act was wholly unjustified. It does not extend to cases where there is a complete want of jurisdiction.⁷⁶

It is humbly submitted that following are the limitations on the right of private defence:

4.1.1 That if there is sufficient time for recourse to the public authorities, the right is not available.

No prudent man will attack a police officer without a prior thought or a criminal conception. In arguendo, the deceased did threaten the accused during their first confrontation, they did have sufficient time for recourse to public authorities because the second confrontation happened seven days later. Instead, they went to their senior leaders and resorted to hideous methods to get rid of the deceased. Hence it is humbly contended that the accused cannot take the plea of private defence.⁷⁷

4.1.2 That more harm than necessary should not be caused.

It is humbly submitted that the accused exceeded their right to private defence by picking up a rod from a nearby shop and hit the deceased on his head. Hence it is humbly submitted that the accused may be held guilty under S.304 of the Rabat Penal Code for Culpable Homicide.⁷⁸

4.1.3 That there must be a reasonable apprehension of Death or of Grievous Hurt to the person or damage to the property concerned.

The words “colour of office” refers to irregular as distinguished from illegal acts. If what has been done is in good faith under colour of his office, no right of private defence would arise.⁷⁹ Assuming without admitting the fact that the deceased did carry a holster on the day of crime, there is no proof from the eye witnesses to show that he removed a gun from the holster to cause an apprehension of death.⁸⁰ It is humbly submitted that the accused are falsely testifying to consummate their act of private defence.

⁷⁶ *Jograj Mahto v. Emperor*, A.I.R.1940 Pat.696 at p.698

⁷⁷ *Jai Dev v. State of Punjab* (1963) 3 S.C.R.489

⁷⁸ *Hira Rai v. State of Bihar*, A.I.R. 1972 S.C. 244 at p.246

⁷⁹ *Kizhakkethil Suleiman v. State of Kerala*, A.I.R 1964 Ker. 185 at p.189

⁸⁰ *Wassam Singh v. State of Punjab*, 1996 S.C.C (Cr.) 119 at p.128



4.2 Anticipatory or pre-emptive self-defence is not a defence under § 96 of RPC

The prosecution contends that preparation consists⁸¹ in devising or arranging means necessary for the commission of the offence. Preparation on the part of the accused to accomplish the crime or to prevent its discovery, or to aid his escape, or to avert suspicion from himself are relevant on the according to § 8 of the REA, 1872. In the present case the accused had browsed some of the provisions of self-defence which was evident from the Ex. 4⁸². Therefore it is clearly established that the accused had devised this plot and accomplished the crime in the pretext of private defence. Therefore the conduct of the accused seeks considerable weight as his act was only a pre-emptive or anticipatory self-defence and not a case of private defence as envisaged under § 96 of the RPC.

4.3 Private defence supported by an interested witness is weak in the eyes of law

The evidence of a highly interested witness supporting the plea of private defence is likely to be rejected. This is because the witness who corroborates that the act of the accused was only under the pretext of private defence has a strong vested interest⁸³ so as to protect A-1 and A-2. As they were not aware of the entire facts as to relationship of the accused with A-3 their evidence casts a heavy doubt upon the plea of self-defence by the accused.

ISSUE 5: WHETHER THERE HAS BEEN ANY OBSTRUCTION OF PUBLIC SERVANT FROM DISCHARGING HIS PUBLIC FUNCTIONS

It is humbly contended by the *prosecution* that the accused A-1 and A-2 had voluntarily obstructed the public servant from discharging his function therefore they could be charged under § 186 of the RPC. The ingredients of the section are as follows i) The person obstructed was the public servant, ii) That at the time of obstruction he was discharging his public function, iii) The accused obstructed him in the same, iv) He did so voluntarily

Proof of *mala fide* is not necessary to invoke the provisions of § 186.⁸⁴ In the present case the deceased was a public servant at the time of his death and he was acting only within his authority

⁸¹ *Jain v. R*, A.I.R. 1943 Pat 82; *Lakshmi Prasad v. Emperor*, A.I.R. 1923 Pat 307

⁸² *Casedata*, Pg. 6

⁸³ *Mangroo v. State*, 1983 All LJ 232 (DB)

⁸⁴ *Karuman*, (1894) 1 Weir 134



which was obstructed by the A-1 and A-2 voluntarily. Therefore the accused is liable to be charged under this section without a scintilla of doubt.

5.1 Voluntary obstruction of public servant by A-1 and A-2

It is contended by the *prosecution* that A-1 and A-2 had voluntarily obstructed the public servant from discharging his public function. The word "voluntarily" in this context indicates the commission of some overt act of obstruction as distinguished from mere passive conduct⁸⁵

It is clear from the report of the investigation officer that the deceased had warned both A-1 and A-2 that they are obstructing him from discharging his function on 30th March 2016. Even if the act of the public servant is not strictly legal yet the obstruction caused to him when he was discharging his functions in good faith would fall under this section.⁸⁶ The word obstruction connotes some overt act in the nature of violence or show of violence.⁸⁷ There can be no voluntary obstruction, unless it was so intended. In order to fix the accused with the offence it is necessary that the accused should have knowledge of the fact that the public servant was discharging his functions⁸⁸. It is submitted that both A-1 and A-2 had knowledge of the fact that the deceased was a police officer who was in the discharge of his public functions.

Public functions contemplated by this section mean legal or legitimately authorized public functions. Where an act sought to be done by the person is one that he is legally authorized to do, then the obstruction is legal obstruction⁸⁹ It has been held that if a public servant *bona fide* believed that he was discharging his public functions within the scope of his authority, even though he was mistaken as to the extent of his powers, an obstruction caused to him would be punishable under the section.⁹⁰

5.2 The accused had obstructed while discharging his public function

The accused had obstructed the deceased while he was discharging his public function. There was objection as to the legality of the act of the deceased. Thus it was absolutely clear that the

⁸⁵ *Somanna*, I.L.R. 15 Mad. 221

⁸⁶ *Public Prosecutor v. Madhava Bhonjo Santos*, A.I.R. 1917 Mad 889; 17 Cri LJ 481

⁸⁷ *Phudki*, 1955 Cri LJ 278 (All)

⁸⁸ *Amar Nath*, I.L.R. 5 All 318

⁸⁹ *Dharmidhar Jana v. Kidanath Das* A.I.R. 1945 Cal. 48

⁹⁰ *Vyankatrav Shrinivas* (1870) 7 BHC (Cr C) 50



deceased had acted within his authority. No objection as to the legality of the act have to be taken at the time of trial if the act was well within his office⁹¹ or if the servant has acted in good faith.⁹²

5.2.1 The accused had Mens rea to commit such obstruction

In order to constitute an offence under this section, the obstruction must be wilful. It is therefore contended it was not merely the intention but the intention was encompassed with some sort of hostility towards the deceased. The same was evident from the statements of A-3. Thus the prosecution most humbly contends the accused had animosity against the deceased. Defiance to such public authorities must be viewed seriously. If it was allowed to be committed with impunity, the prestige of the Court would be lost.

5.3 Conditions Requisite for Initiation of Proceedings are satisfied

For prosecuting a person under this provision complaint by a public servant is necessary. But the question is to whether the conditions for application of § 195 are applicable to the case is to be determined by the Court with reference to the facts existing at the time when it seeks to take cognizance.⁹³ It is expedient in the interest of justice used under § 340 shows that such a course to be adopted only if the interest of justice requires⁹⁴ and not in every case and whether in view of said language Court is bound to make a complaint regarding commission of an offence under § 195 (1) no before filing of complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interest of justice that the enquiry should be made into any of the offence.

⁹¹ *Samsuddin Chandasaheb Peerjade, Cri. Appeal No. 562 of 1928, per. Kemp and Baker JJ, on May 10, 1929*

⁹² *Ma Kin, A.I.R. 1925 Ran 383*

⁹³ *M.L. Sethi v. R.P. Kapur, 1967 Cri LJ 528*

⁹⁴ *Iqbal Singh Marwah v. Meenakshi Marwah, A.I.R. 2005 SC 2119*

**PRAYER FOR RELIEF**

Wherefore in the light of the facts stated, charges framed, evidence adduced, arguments advanced and authorities cited, the Counsels for the Prosecution humbly pray and implore before this Hon'ble Court of Sessions to be Convict A-1, A-2, and A-3 and declare (u/s. 235 of Cr.P.C)

1. That **Mr. Abhishek (A-1), Mr. Angad (A-2) and Mr. Dushyant (A-3)** are liable under § 304 read with § 34 of the RPC, 1860 for the culpable homicide not amounting to murder of the deceased Mr. Amit Choudhary.
2. That **Mr. Angad (A-2) and Mr. Dushyant (A-3)** are liable under § 107 for abetment of person to commit the manslaughter of Mr. Amit Choudhary.
3. That **Mr. Abhishek (A-1) and Mr. Angad (A-2)** are liable to be convicted § 186 of RPC for obstructing the public servant while he was discharging his public function.

The Court may make any other such order as it may deem fit in terms of justice, equity and good conscience.

And for this act of kindness the Defence shall as duty bound ever humbly pray.

Respectfully Submitted

Place: Mavada, Jagutar

S/d _____

Date: September 2016

Counsel(s) for the Prosecution

**APPENDIX I****Relevant extracts of the Indian Penal Code, 1860****Section 34: Acts done by several persons in furtherance of common intention**

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

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.

Section 186 - Obstructing public servant in discharge of public functions

Whoever voluntarily obstructs any public servant in the discharge of his public functions, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Section 299 - Culpable homicide

Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the



knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Section 304 - Punishment for culpable homicide not amounting to murder

Whoever commits culpable homicide not amounting to murder shall be punished with 1 [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

APPENDIX II

Relevant extracts of the Code of Criminal Procedure, 1973

Section 154: Information in cognizable cases

- (1) *Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
- (2) *A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.*

Section 161: Examination of witnesses by police.

- (1) *Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special*



order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) [-----]

(3) *The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.*

Section 162: Statements to police not to be signed: Use of statements in evidence

1) *No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it ; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:*

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(1) *Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of section 27 of that Act.*

Section 177: Ordinary place of inquiry and trial

Every offence shall ordinarily be inquired inland tried by a Court within whose local jurisdiction it was committed.



Section 195: Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence,

(b)-----

(2) Where a complaint has been made by a public servant under clause (a) of subsection (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3)----

(4)----

Section 209 - Commitment of case to Court of Session when offence is triable exclusively by it

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-

[(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions



of this Code relating to bail, remand the accused to custody until such commitment has been made;]

(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.

Section 291: Deposition of medical witness.

- (1) The deposition of a civil surgeon or other medical witness, taken and attested by a Magistrate in the presence of the accused, or taken on commission under this Chapter, may be given in evidence in any inquiry, trial or other proceeding under this Code, although the deponent is not called as a witness.*
- (2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any such deponent as to the subject- matter of his deposition.*

Section 294: No formal proof of certain documents.

- (1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.*
- (2) The list of documents shall be in such form as may be prescribed by the State Government.*
- (3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed: Provided that the Court may, in its discretion, require such signature to be proved.*



APPENDIX III**Relevant extracts of the Indian Evidence Act, 1872****Section 6: Relevancy of facts forming part of same transaction**

Facts which, though not in issue, are so connected with a fact in issue as to form part of the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.

Section 8 - Motive, preparation and previous or subsequent conduct

Any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.

The conduct of any party, or of any agent to any party, to any suit or proceeding, in reference to such suit or proceeding, or in reference to a fact in issue therein or relevant thereto, and the conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact, and whether it was previous or subsequent thereto.

Explanation 1.—The word "conduct" in this section does not include statements, unless those statements accompany and explain acts other than statements, but this explanation is not to affect the relevancy of statements under any other section of this Act.

Explanation 2.—When the conduct of any person is relevant, any statement made to him or in his presence and hearing, which affects such conduct, is relevant.

Section 10 - Things said or done by conspirator in reference to common design

Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.



Section 17 - Admission defined

An admission is a statement, [oral or documentary or contained in electronic form], which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, hereinafter mentioned.

Section 45: Opinions of experts

When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts.

Section 105 - Burden of proving that case of accused comes within exceptions

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860) or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.