

TEAM CODE:

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT
COMPETITION, 2016**

**BEFORE THE COURT OF SESSIONS
AT MAVADA, JAGUTAR, RABAT**

S.C. No. 101 OF 2016

BETWEEN:

STATE OF JAGUTAR

.....PROSECUTION

V.

1.ABHISHEK

2.ANGAD

3.DUSHYANTH

.....ACCUSED

**FOR THE OFFENCES CHARGED UNDER
SECTIONS 186,107 & 302 R/W 34 OF THE RABAT PENAL CODE, 1860**

UPON SUBMISSION TO THE HON'BLE SESSIONS JUDGE

WRITTEN SUBMISSIONS ON BEHALF OF THE PROSECUTION

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LIST OF ABBREVIATIONS

A1	Accused Number 1
A2	Accused Number 2
A3	Accused Number 3
AIR	All India Reporter
Bom	Bombay High Court
Cal	Calcutta High Court
Cr.P.C.	Code of Criminal Procedure, 1973
Cri LJ/	Cr LJ Criminal Law Journal
Del	Delhi High Court
DW	Defence Witness
Ker	Kerala High Court
Mad	Madras High Court
MP	Madhya Pradesh High Court
Pat	Patna High Court
PW	Prosecution Witness
r/w	Read With
s.	Section
SC	Supreme Court
SCC	Supreme Court Cases

INDEX OF AUTHORITIES

STATUTES

1. THE INDIAN PENAL CODE, 1860
2. THE CODE OF CRIMINAL PROCEDURE, 1973
3. THE INDIAN EVIDENCE ACT, 1872
4. INDIAN POLICE ACT, 1861

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1. *Udayanath Barik v. State of Orissa*, 1989 Cr LJ 2216 (Ori)
2. *Virsa Singh v. State of Punjab*, AIR 1958 SC 465
3. *Mam Chand & Ors v. The State of Haryana*, (P&H)decided on 24.01.1980
4. *Mahendra Singh v. State of M.P.*, 3SCC (Cri.) 583
5. *Govindaraju@ Govinda v. State by Srirampuram & Ors*, SC, decided on 15.03.2012
6. *State of A.P. v. Rayappa*, AIR 2006 SC 1643
7. *Jacob Mathew. V. State of Punjab*, AIR 2005 SC 3108
8. *In Re Maragatham alias Lakshmi*, AIR 1961 Mad 498
9. *Kehar Singh v. State (Delhi Administration)*, AIR 1988 SC 1883
10. *Jawed Khan & Ors. V. State of Maharashtra &Ors* ,Bom HC Decided on 08.03.2016
11. *Gulab Singh v. State of Rajasthan*, Raj HC, decided on 13.03.qq1974
12. *D.L.R. v. Karuna*, 22 Cal 164
13. *Ghasi Ram v. State AIR 1952 Bhopal 25.*
14. *Chahat Khan v. State of Haryana*, AIR 1972 SC 2574
15. *Chandra Prakash Shahi v.State of UP*, (2000) 2SCC 554

16. *Suresh Chandra Bahri v. State of Bihar*, AIR 1994,SC 2420
17. *Udhay Pal Singh v. State of UP*, 1972 SC 542
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20. *Jai Prakash v. State (Delhi Admn)*, (1991) 2 SCC 32
21. *Hari Singh V. State of Rajasthan* , AIR 1997 SC 1505
22. *Bhanwar Singh v. State of MP*, (2008) 16 SCC 657
23. *Shajahan v. State of Kerala*, (2007) 12 SCC 96
24. *Kishori Lal v. State of Madhya Pradesh*, AIR 2007 SC 2457
25. *Parichhat v. State of Madhya Pradesh*, AIR 1972 SC 535
26. *Devilal v. State of Rajasthan*, AIR 1971 SC 1444
27. *Krishnan v. State of Kerala*, AIR 1997 SC 383
28. *Ghasi Ram v.State*, AIR 1952, Bhopal 25 page

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34th edn, 2011)
4. Kelkar, R.V. Criminal Procedure, (5th Ed. 2011)
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STATEMENT OF JURISDICTION

The prosecution has approached this Hon'ble Court as it has jurisdiction to try the instant matter under Section 177 read with Section 209 of the Code of Criminal Procedure, 1973.

Section 177:

*“177. **Ordinary place of inquiry and trial**- Every offence shall ordinarily be inquired into and Tried by a Court within whose local jurisdiction it was committed.”*

Read with Section 209:

*“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 the case to the Court of Session;

(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.”

STATEMENT OF FACTS

[A] BACKGROUND:

Abhishek is a politically active student leader studying at presidency college, Mavada. Angad is his childhood friend studying in the same college and is constantly in his company. Both of them along with other friends constantly conducted rallies and protests against the Government. Tanya and Natasha also belonged to the same college and were juniors to Abhishek and Angad. One such rally organized by Abhishek was resented by many students and students who took part in the protest were looked down upon and jeered. Tanya and Natasha were victims of the same and they used to get teased by two guys, Peter and Dinesh constantly. When Abhishek and Angad started escort the girls, the same incident repeated on 30th March, 2016. There was a confrontation between Abhishek and Peter with exchange of Words. Subsequently to that incident a police officer Amit Chaudhary accosts Abhishek & Angad and threatens them. The same was discussed by Abhishek with Dushyant.

[B] EVENTS THAT UNFOLDED AND LED TO THE COMMISSION OF THE ALLEGED CRIMES

On 7th April, 2016 the boys came again to tease the girls near the bus stop. Abhishek and Angad started pelting stones at the bikers, and the people started running in panic. The inspector Amit Chaudhary inflicts violence onto Abhishek, slaps him and threatens him, the inspector puts his hand on the gun holster. Abhishek who is apprehended by such an act in a fit of rage takes a metal rod lying closely at the auto garage and throws it towards Chaudhary. The inspector gets hit by it on the head, falls down and gets hit on the head again by the stump of the tree. The Police, on receiving information from Dinesh reached the spot and the inspector was taken to the hospital where he was declared brought dead. Thereafter, Abhishek, Angad and Dushyant were arrested. Having completed the investigation, the Police forwarded the Final report to the Magistrate's Court. The Court of Sessions framed charges against Abhishek Lepat, Angad Lepat and Dushyant.

SEQUENCE OF EVENTS

Serial No.	DATE	EVENT DESCRIPTION
1	October,2015	Abhishek Protests against the arrest of Kidhar Lepat.
2	February,2016	Ram, of BNU arrested for Organizing protest against “Judicial Killing” of Safan Rugu.
3	March 15 th ,2016	Rally in support of Ram, Organized by Abhishek.
4	March 28 th ,2016	Tanya and Natasha teased by two boys in presence of Abhishek and Angad.
5	March 30 th ,2016	Above episode repeated again, the two boys threatened Abhishek and Angad
	March 30 th Evening	Police officer threatens Abhishek and Angad.
6	April 2 nd ,2016	Abhishek discussed with his friend Dushyant who is a local leader of the Political party to which Abhishek’s College Union

		is affiliated.
	April 2 nd Evening	Abhishek and Angad sat and browsed various provisions regarding police action during riots, provocations etc. and details regarding legal protection under self defence
7	April 7 th , 2016	The boys came again & teased the girls near the bus stop. Infuriated by this Abhishek and Angad pelted stones at the bikers. The Inspector comes and slapped Abhishek and during the fracas, the inspector kept his hand on his belt showing the gun holster. Abhishek threw rod at the Inspector, which hit him on the head, falls down and gets hit on the head again by the stump of the tree. Dinesh informed the police, they immediately reached the spot and he was taken to Hospital where he was declared brought dead. Subsequently, both Abhishek and Angad were arrested and the accused pleaded not guilty and also claimed that he acted in self defense. The Police forwarded the Final Report and The Court of Sessions, framed charges against the Accused.

STATEMENT OF CHARGES

BEFORE THE HON'BLE COURT OF SESSIONS, MAVADA

State of Jagutar

v.

Mr.Abhishek Lepat & 2 others

S.C.No.101 of 2016

After complying with the statutory requirements the court of sessions framed charges against the accused under sections;

1. Mr.Abhishek Lepat has been charged under Sections 186,304 r/w 34 of the Rabat Penal code, 1860.
2. Mr.Angad Lepat has been charged under Section 107, 186, 304 r/w 34 Rabat Penal code, 1860.
3. Mr.Dushyanth has been charged under Section 107, 304 r/w 34 Rabat Penal code, 1860.

The Prosecution humbly prays before this Hon'ble court to alter the charges under Section 216 of the Code of Criminal Procedure,1973 of all the accused from the charge under Section 304 to section 302 of the Rabat Penal code, 1860. The evidence on record satisfies the conditions and ingredients under 302 as such the prosecution considers it necessary to press such charges.

The Prosecution humbly states that such an alteration would not cause any prejudice to the accused persons herein.

SUMMARY OF ARGUMENTS

1. **The accused A-1 and A-2 are guilty for the offences committed under Section 186 of Rabat Penal Code, 1860.**

It is humbly submitted before this Hon'ble Court that the accused is liable to be convicted under Section 186 of the Rabat Penal Code, 1860 for obstructing a public servant in discharge of his lawful duty. To prove the aforesaid charge, the prosecution relies on the testimony of Pw-4, Pw-5 and Pw-6 who are the natural witnesses in the case in its true sense. Further, the prosecution submits that the facts and the circumstantial evidence by itself are instrumental in establishing the charge under Section 186 of the Rabat Penal Code, 1860.

2. **Mr.Abhishek Lepat (A-1) is guilty for murder under Section 302 of the Rabat Penal code, 1860.**

It is humbly submitted before this Hon'ble Court that Abhishek (A-1) is liable to be convicted under Section 302 of the Rabat Penal code, 1860 for the gruesome murder of Inspector Amit Chaudhary as he had committed the actus reus and had the requisite mens rea to commit the offence. The accused also had the motive to commit the said offence of murder.

To prove the charge of murder under Section 302 of the Rabat Penal code, 1860. The prosecution relies on the testimony of Pw-4, Pw-5 and Pw-6 who are the natural witnesses of the crime committed. The medical evidence of the post mortem report and the forensic report clearly states that cause of death of the deceased was due to intracranial hemorrhage. Further, the prosecution relies on the circumstantial evidence which stands corroborated by motive, recovery of the exhibits and expert evidence.

3. Mr.Angad Lepat(A-2) and Mr.Dushyanth(A-3) are guilty under Section 107 and 302 r/w 34 Rabat Penal code, 1860.

It is humbly submitted before this Hon'ble Court that A-2 & A-3 are liable to be convicted under Section 107 and 302 r/w 34 Rabat Penal code, 1860, for meticulously planning and abetting Mr.Abhishek(A-1) to commit the cold blooded murder of Inspector Amit Chaudhary. All the accused had the motive to commit the said offence of murder.

To prove the aforementioned charges the prosecution relies on the circumstantial evidence which stands corroborated by motive, recovery of exhibits and expert evidence.

ARGUMENTS ADVANCED

1. THE ACCUSED IS GUILTY FOR OFFENCE COMMITTED UNDER SECTION 186 OF THE RABAT PENAL CODE, 1860.

The prosecution humbly submits that the accused is guilty for obstructing public servant in discharge of public functions under section 186 of the Rabat Penal Code, 1860 (*hereinafter* RPC).

To constitute an offence Under Section 186, RPC the following ingredients must be present.

- (i) There must be an obstruction;
- (ii) The obstruction must be by the accused;
- (iii) The obstruction must be voluntary;
- (iv) The obstruction must be of a public servant; and
- (v) The obstruction must be in discharge of his, i.e., the public servant's public functions.¹

[1.1] A-1 and A-2 voluntarily obstructed Inspector Amit Chaudary (deceased).

The prosecution submits that Mr. Dinesh (Pw-1) and Mr. Peter (Pw-2) were harassed and threatened by A1 and A2 for the reason that they used to visit the tea stall near A1 & A2's college. A1 and A2 also threatened them with dire consequences if they were seen anywhere near the college of the accused. On 7th April, 2016, when Mr. Dinesh stopped by for a cup of tea near college of A1 and A2, started pelting stones at them, due to which the people standing at the bus stop started running in panic as per the facts on record.² Meanwhile, Inspector Amit

¹ *Udayanath Barik v. State of Orissa*, 1989 Cr LJ 2216 (Ori)

² Moot Proposition, P.3, Para 17

chaudhary intervened and tried to control the situation, but the accused A1 & A2 wantonly picked a fight with the Inspector for intervening and stopping them from pelting stones as such the accused A1 and A2 have done an overt act in obstructing the public servant. The evidence of pw-6 corroborates the circumstantial evidence that proves that the accused A-1 and A-2 have voluntarily obstructed the said inspector from discharging his public functions.

[1.2] The Inspector Amit Chaudhary was a public servant.

It is humbly submitted that the police officer is always on duty even if such person is not wearing the uniform. The Section 22 of the Indian Police Act, 1860 says;

“22. Every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.”

As per the aforementioned section as a police officer is always on duty it can be safely inferred that the Inspector Amit Chaudhary was on duty and was acting as a public servant at the time of commission of the offence.

[1.3]The police officer was discharging his public functions.

It is humbly submitted that the police officer was discharging his public functions envisaged in Section 34 of the Indian Police Act, 1860³ at the time of obstruction by the accused A1 and A2. Section 34 of the Indian Police Act, 1860 says;

“34. Any person who, on any road or in any open place or street or thoroughfare within the limits of any town to which this section shall be specially extended by the Government, commits

³ Section 34 of the Indian Police Act, 1860

any of the following offences, to the obstruction, inconvenience, annoyance, risk, danger or damage of the residents or passengers shall, on conviction before a Magistrate, be liable to a fine not exceeding fifty taka, or to imprisonment with or without hard labour not exceeding eight days; and it shall be lawful for any police-officer to take into custody, without a warrant, any person who within his view commits any of such offences”

It is humbly submitted that as the accused A1 and A2 were pelting stones at Mr.Dinesh and thereby causing panic in the people standing near the bus stop and further causing inconvenience to the public. The police officer rightly intervened to calm the situation under the lawful power vested upon him by Section 34 of the Indian Police Act, 1860. Therefore, in the light of the same, it is proved that the police officer was discharging his public functions lawfully and the accused A-1 and A-2 have voluntarily obstructed him as such the accused A1 & A2 are guilty for the charge under Section 186 of the Indian Penal Code.

2. THE ACCUSED A-1 IS GUILTY FOR MURDER UNDER SECTION 302 OF THE RABAT PENAL CODE, 1860.

It is humbly submitted before this Hon’ble court that the accused is liable for the offence of Murder U/S 302 of the RPC. Section 302 is punishment for murder, therefore, in order to bring home a conviction u/s 302 the essentials of section 300 have to be satisfied.

In *Virsa Singh v. State of Punjab*,⁴ the Supreme Court laid down that in order to bring a case within clause (3) of murder, the prosecution must prove the following:

- (1) It must establish, quite objectively, that a body injury is present.
- (2) The nature of the injury must be proved.

⁴ AIR 1958 SC 465

(3) It must be proved that there was an intention to inflict that particular bodily injury, that is to say that it was not accidental or unintentional, or some other kind of injury was intended,

(4) It must be proved that the injury of the type just described made up of the elements set out above, is sufficient to cause death in the ordinary course of nature.

The prosecution therefore humbly contends that both, the *actus reus*[2.1] and the *mens rea*[2.2] of the crime are established, and [2.3] the defence can, by no means plead self- defence.

2.1 ACTUS REUS OF MURDER IS ESTABLISHED.

Actus Reus has been defined as “such result of human conduct as the law seeks to prevent.”⁵ In a case of murder, the actus reus is the physical conduct of the accused that caused death of the victim. The prosecution relies on the following evidence [A] Testimony of the eye witnesses, [B] Medical evidence, [C] Panchnama and FIR in order to establish the actus reus in the case in hand.

[A] Testimony of the eye witnesses

The presence of the witnesses at the alleged time and place of occurrence cannot consequently be doubted. On an overall appraisal of the testimony of these witnesses we are inclined to place implicit reliance on their words.⁶ It is clear that PW4 PW5 and PW6 were eye witnesses in the true sense of the word. It is now a settled proposition that conviction can be based on the testimony of a sole eye witness.⁷

It is humbly contended that the accused took a metal rod and hit the deceased, thereby causing

⁵ PSA PILLAI'S CRIMINAL LAW,(11th ed), pg 24

⁶ *Mam Chand & Ors v. The State of Haryana*,(P&H)decided on 24.01.1980

⁷ *Mahendra Singh v. State of M.P.*, 3SCC (Cri.) 583

his death, the statements of the witness of PW4, PW5 and PW6⁸ is direct evidence to the fact. The aforesaid act took place in the presence of PW6 which makes him a natural witness. Further, it has also been corroborated with the material particulars namely, the medical evidence, which states that death was caused due to hemorrhage which was triggered by a blow on the head. It is further corroborated with the complaint⁹ and recovery.¹⁰

The evidence of PW4, PW5 and PW6 further stands corroborated with the statement of DW4 also. The evidence of the prosecution witness should be cogent, reliable, and must essentially fit into the chain of events that have been stated by the prosecution.¹¹ By now, it is a well-established principle of law that the testimony of a witness otherwise inspiring confidence cannot be discarded on the ground that he is an interested witness.¹²

Therefore, it is submitted that, the direct evidence in the instant matter, i.e testimony of the eye witness shows that within all human probability that the act was done by the accused.

[B] Medical Evidence

To impose criminal liability for murder, it is necessary that the death should have been the direct result of the act of the accused and the act must be immediate and proximate cause of the deceased's death.¹³ In other words, his acts must be equivocally referable to the commission of the specific crime.¹⁴ In order to establish the above, the prosecution relies on the post mortem (autopsy) report and the forensic report.

⁸ Moot proposition, pg 18

⁹ Moot Proposition, pg 9, Annexure-1

¹⁰ Moot Proposition, pg 10, Annexure-2

¹¹ *Govindaraju@ Govinda v. State by Srirampuram & Ors*, SC, decided on 15.03.2012

¹² *State of A.P. v. Rayappa*, AIR 2006 SC 1643

¹³ *Jacob Mathew. V. State of Punjab*, AIR 2005 SC 3108

¹⁴ *In Re Maragatham alias Lakshmi*, AIR 1961 Mad 498

The post mortem report becomes important where the cause of death is to be established and is a matter of controversy.¹⁵ Moreover, it is not possible for the prosecution to establish each and injury suffered by the witness. However, the prosecution would like to clearly establish the intricacies in the post mortem and forensic report.

(i) Cause of death- The post mortem¹⁶ and forensic report¹⁷ clearly states that the cause of death was intracranial hemorrhage. The post mortem report states that death was due to intracranial hemorrhage which was triggered by the blow on the head of the deceased.¹⁸ This is further explained clearly with the help of the forensic report which states the exact reason for the same. It is clearly established that due to the blow on the head of the deceased, the force with which the metal rod hit the skull caused damage to it. Further when the deceased hit the ground the brain experienced a mechanism known as coup-countercoup.¹⁹ It clearly means that when a person is hit at one point, blood gets pooled on the opposite side because of the brain hitting the Cranium of the skull. The movement of the brain is due to the force inflicted and blood loss is termed as hemorrhage.²⁰ This further caused heavy internal bleeding thereby leading to a hypovolemic shock and subsequently, death. The wounds and cracking of the skull also establishes this act cogently. The cause of death is therefore established very clearly that the deceased died due to the act of the accused.

The Prosecution has to overrule the possibility of natural, accidental or suicidal death by adducing reliable and convincing evidence clearly indicating the mode of death as homicidal. In the present case to prove homicidal death the prosecution has placed strong reliance on

¹⁵ *Kehar Singh v. State (Delhi Administration)*, AIR 1988 SC 1883

¹⁶ Moot Proposition, Annexure-3, pg 11.

¹⁷ Moot proposition, Annexure-4, pg 13

¹⁸ Ibid

¹⁹ Ibid

²⁰ J.P.Modi, Textbook on Medical Jurisprudence and Toxicology, 22nd edition

medical and circumstantial evidence.²¹ In the light of the medical evidence death was prompted by the act of commission on the part of A1 and this was sufficient in the ordinary course of nature to cause death u/s 300(3) of RPC.

[C] Panchnama and FIR

The investigating officer visited the crime scene outside presidency college. After observing the place and taking statements,²² prepared a sketch. He also took into possession the murder weapon- the metal rod, blood samples, finger prints and the victims holster²³. Which further establishes the actus reus and the fact that accused had used the metal rod. The FIR stated that the deceased was hit with a metal rod by the accused, which also establishes the act of commission of the crime by the accused.²⁴ The act which has caused death forms a part of the same transaction and is closely connected in time of purpose, irrespective of the intention to cause death through this act.

2.2 MENS REA OF MURDER IS ESTABLISHED

Mens rea is also known as the guilty intention. *Intention always connotes a conscious state of mind of a wrong-doer. When the mental faculties of a culprit are roused into activity and summoned into action for the deliberate purpose of being directed towards a particular and specified end, then he is said to have acted intentionally.*²⁵ The state of mind of a person is impossible to prove by the means of direct evidence.²⁶ It can either be by a person's own

²¹ *Jawed Khan & Ors. V. State of Maharashtra & Ors*, BOM HC Decided on 08.03.2016

²² Moot Proposition, Annexure- 5

²³ Moot Proposition, Annexure-2, pg 11

²⁴ Moot Proposition, Annexure-1, pg 9

²⁵ *Gulab Singh v. State of Rajasthan*, Raj HC, decided on 13.03.1974

²⁶ *D.L.R. v. Karuna*, 22 Cal 164

statement or by circumstantial evidence if the state of mind is manifested in one form or the other. This is established by stating that [A] The accused had the intention to kill [B] Attribution of motive and preparation to the accused [C] Conduct of the accused- previous and subsequent.

[A] *The accused had the intention to kill the deceased*

In deciding the question of intention, the nature of the weapon used, the part of the body on which the blow was given, the force and some of the factors assume importance.²⁷ When injuries are inflicted on the vital parts of the body with sharp edged instruments then the intention to kill can be attributed to the offender.²⁸ Under clause 3 of section 300 of the RPC it is enough to prove the intention of bodily injury sufficient to cause death. Given that the accused inflicted a blow on the head of the deceased which is a vital organ of the body with a dangerous weapon is sufficient to prove the requisite intention, u/s 300 (3) of the RPC. Therefore it can very precisely be inferred that the accused had the intention to kill.

[B] *Motive and preparation to kill can clearly attributed to the accused*

Motive is that which incites or stimulates a person to do an act.²⁹ Motive by itself is sufficient to prove the guilt of the accused. It being a compelling force to commit a crime becomes a relevant factor in determination of guilt of an individual or of the quantum of punishment.³⁰ It can serve as a link forming chain of events.³¹ Given the fact that Dushyant's statement³² which instigated and made Abhishek motivated enough to commit the act in order to please his political leader is enough to attribute motive to the accused.

²⁷ Ghasi Ram v.State, AIR 1952, Bhopal 25 page

²⁸ *Chahat Khan v. State of Haryana*, AIR 1972 SC 2574

²⁹ *Chandra Prakash Shahi v.State of UP*, (2000) 2SCC 554

³⁰ *Suresh Chandra Bahri v. State of Bihar*, AIR 1994,SC 2420.

³¹ *Udhay Pal Singh v. State of UP*, 1972 SC 542

³² Moot Proposition, pg 2

Preparation is the proof of premeditation where the offence or its attempt is committed.³³

Preparation on the part of the accused clearly establishes the requisite guilty mind or mens rea.³⁴ The fact that browsing history from the accused's system has been recovered it shows that the accused prepared enough in order to save himself from the act. *He had the motive to kill the police inspector and therefore prepared for saving himself by browsing provisions relating to self defence.*

[C] Conduct of the accused AI

Conduct of the parties is relevant U/s 8 of The Indian Evidence act "if such conduct influences or influences the fact in issue or relevant fact and whether it was previous or subsequent thereto.

(i) Previous expressions by the accused of ill will or hatred towards or an intention to kill the deceased are all relevant as conduct.³⁵ The fact that there was existing rivalry between the accused and the deceased is established by the given facts of the case. All the accused have met several number of times in order to plot the death of the deceased.

(ii) Telephonic Conversations - The Apex court in a number of decisions³⁶ laid down the principles regarding admissibility, reliability and evidentiary value of telephonic conversations:

a) The contemporaneous dialogue, which was tape recorded, formed part of res-gestae and is relevant and admissible under section 8 of the Indian Evidence Act.

b) The contemporaneous tape record of a relevant conversation is a relevant fact and is admissible under section 7 of the Indian Evidence Act.

³³ J.V Ryan, The law of Criminal Evidence in British India(Calcutta),1912, pg 15

³⁴ Ibid

³⁵ Section-8 of Indian Evidence Act

³⁶ *Anvar P.V. vs. P.K. Basheer and Others*, AIR 2014 SCW 5695

c) Such a statement was not in fact a statement made to police during investigation and, therefore, cannot be held to be inadmissible under section 162 of the Criminal Procedure Code.

d) Such a recorded conversation though procured without the knowledge of the accused but the same is not elicited by duress, coercion or compulsion nor extracted in an oppressive manner or by force or against the wishes of the accused.

The telephonic conversations recorded by the investigating officer suggest a guilty mind, and establishes the fact that all the accused conspired together and develop an attitude of malice and ill will therefore, meaning to kill him. The conduct of the accused in the above circumstances is very obvious and one can draw a clear cut inference of guilt.

[2.3] THE ACCUSED CAN, BY NO MEANS PLEAD SELF DEFENCE

The prosecution submits that, the present case will not fall under any of the General exceptions in the RPC and therefore the plea of private defense cannot be entertained. The accused claims to have availed the right to private defence as per sections 96-105 RPC which may extend to causing death.

It is the reasonable apprehension of death or grievous hurt that gives rise to the right of private defence.³⁷ Mere verbal expressions, however hot they may be, would not constitute a reasonable apprehension.³⁸ The first and the foremost principles to be borne in mind is that there must be eminent danger, giving the signal to act in exercise of the right of private defence.³⁹ The

³⁷ *Vishvas Aba Kurane v. State of Maharashtra*, AIR 1978 SC 414

³⁸ *Jai Prakash v. State (Delhi Admn)*, (1991) 2 SCC 32

³⁹ *Hari Singh V. State of Rajasthan* , AIR 1997 SC 1505

necessity must be a present necessity and not real or apparent.⁴⁰ The right to private defence does not include the right to launch an offensive attack.⁴¹

From the statements of all the witnesses⁴², it is evident that the deceased had not caused any apprehension for the accused to cause his death. The testimony of PW1 and PW6⁴³ clearly states that the deceased did not cause any grave apprehension in the mind of the accused. Had the inspector taken out the gun, and pointed it towards the accused, there could be a reasonable inference of apprehension. Neither of DW1, DW2 & DW4 contends that the act of the officer threatened Abhishek. There was no action on behalf of the police officer threatening the accused. The facts clearly state that “the inspector not expecting this gets hit and falls abruptly”⁴⁴ which clearly means that he did not commit any offence, and the accused intentionally inflicted the injury.

Further instead of hitting him on the head, the accused could have hit the deceased on any other part to prevent the alleged danger. One of the most important caveats of self defence is that no more harm than necessary should be caused. It is apparent that the accused exceeded his right to private defence.

Arguendo, even assuming that the A1 had right of private defence it is pertinent to note that a person is deprived of the right of private defence if he knows, or has a reason to believe that the person doing the acts public servant.⁴⁵ This clause implies to those cases in which the public servant is acting in good faith under the colour of his office, though the particular act being done

⁴⁰ *Bhanwar Singh v. State of MP*, (2008) 16 SCC 657

⁴¹ *Shajahan v. State of Kerala*, (2007) 12 SCC 96

⁴² Moot Proposition, Annexure 5

⁴³ Ibid

⁴⁴ Moot proposition, pg 3

⁴⁵ Section 99, Indian Penal code, 1980

by him may not be justifiable by law.⁴⁶ Where a police officer, acting bona-fide under the colour of his office, arrests a person but without authority, the person so arrested has no right of self defence against the officer.⁴⁷

Therefore given the above evidence it is clearly established that the accused is guilty of murder. The “Correspondence Principle”⁴⁸ states that there should be a correspondence between the actus reus and mens rea, i.e the mens rea should be a state of mind relating to the actus reus. The correspondence principle is one which the law aspires as an ideal. In the instant case it is proved beyond reasonable doubt that the accused committed the murder of the deceased as there was the requisite actus reus and mens rea and the correspondence of the same.

3. MR.ANGAD LEPAT (A-2) AND MR.DUSHYANT (A-3) ARE GUILTY FOR ABETMENT OF MURDER UNDER SECTION 107 &302 R/W SECTION 34 OF THE RABAT PENAL CODE, 1860.

It is humbly submitted that the word ‘Instigate’ means to goad or urge or to provoke or to incite or to encourage to do an act. A person is said to instigate another to an act when he actively suggests or instigates him to act by any means or language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragements.⁴⁹

Abetment may be by instigation, conspiracy or intentional aid as provided in the three clauses of the section. The evidence on record conclusively proves that A2 and A3 have actively abetted A1 to commit the murder of the deceased Police Inspector Amit Chaudhary.

⁴⁶ Dalip,(1896), 18 All 246,252

⁴⁷ Mohamed Ismail , (1935) 13 (Ran) 754

⁴⁸ Criminal Law by Jonathan Herring

⁴⁹ Amiruddin, (1922) 23 Cr.LJ 466.

The Hon'ble Supreme Court in *Kishori Lal v. State of Madhya Pradesh*,⁵⁰ abetment may be committed in three ways, namely, (i) by instigating (ii) by conspiracy (iii) by intentionally aiding to do an act or omission.

[3.1] A2 is guilty for abetting A1 to murder the deceased Police inspector Amit Chaudhary.

It is humbly submitted that the evidence on record abundantly shows that A2 along with A1 and A3 have engaged in a conspiracy to kill the police inspector Amit Chaudhary. This fact is evident from the facts and circumstantial evidence in the case and is further corroborated by the telephone conversations⁵¹. A2 along with A1 actively participated in obstructing the police officers from doing his public functions and further A2 and A1 together browsed various legal provisions relating to self-defense⁵² in order to plot the murder and project it as an act done in self defence and thereby escape the clutches of the Law. These facts unerringly prove that A2 and A3 were accessories before the fact and they had the guilty intention and conspired the murder of the police inspector and thereby abetted the murder of the police officer.

It is humbly submitted that it is not necessary that the abettor should concert 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.⁵³

[3.2] A3 is guilty for abetting A1 to murder the police Inspector.

It is humbly submitted that instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Advice amount—

⁵⁰ AIR 2007 SC 2457.

⁵¹ Exhibit No.5

⁵² Exhibit No.4

⁵³ *Kalil Munda*, (1901) 28 Cal 797.

The facts and circumstantial evidence on record unerringly points towards the culpable involvement of A3 in instigating the A1 to commit the offence of murder. The facts on record clearly show that A3 had actively advised and provoked A1 to commit the murder by saying “*iski yeh himmat, salley ko mar dalo, kam se kam hamare neta toh kush honge*” and further stating that “you are a hero yourself and you know what to do how to defend yourself”⁵⁴ and he further he promised him that their party will support and protect him, come what may. Perusal of these statements clearly establishes the intention of A3 to instigate A1 into committing the offence.

[3.3] A1, A2 and A3 had the common intention under section 34 of the Rabat Penal code to cause the death of the police inspector.

There are three main ingredients of the section:

- a. Criminal act must be done by several persons.
- b. The criminal act must be to further the common intention of all, and
- c. There must be participation of all persons in furthering the common intention.⁵⁵

This is based on the common sense principle that when several persons are alleged to have committed a criminal act, then there is every possibility that different members would have actively given encouragement, help, protection and support, and also actively participated or otherwise engaged in the commission of the criminal act itself.

It is submitted that the common intention should be premeditated.⁵⁶ i.e it must be shown that there was a prior meeting of minds which activated the common intention leading to the

⁵⁴ Moot Proposition, Page :2, Para No.15

⁵⁵ *Parichhat v. State of Madhya Pradesh*, AIR 1972 SC 535

commission of the criminal act. However, there may be incidents in which common intention may develop on the spot, after the offenders have gathered.

Proof of common intention will rarely be available directly. It has to be called out from the circumstances of the case. For applying section 34 it is not necessary to show as a rule, some overt act on the part of the accused. The establishment of an overt act is not a requirement of law to allow Section 34 to operate a criminal act done in furtherance of intention of all by an accused need not be overt, even a deliberate and conscience covert act is enough to bring such a person within the ambit of Section 34.⁵⁷

It is submitted that the facts and circumstantial evidence on record clearly shows that all the accused had premeditated intention to commit the crime which is corroborated by the fact that they discussed about the deceased and during the discussion Dushyant in a fit of rage instigated A1 to kill the deceased and he further promised that the party will support him. Subsequently, A1 and A2 browsed the internet regarding various provisions of self defence in the penal code and the fact that later A1 acted upon their common intention and killed Amit Chaudhary mirrors the common intention of all the accused to commit the murder of Amit Choudhary.

⁵⁶ *Devilal v. State of Rajasthan*, AIR 1971 SC 1444

⁵⁷ *Krishnan v. State of Kerala*, AIR 1997 SC 383

PRAYER

In the light of the facts stated, charges framed, evidence adduced, arguments advanced and authorities cited, the prosecution most humbly prays before this Hon'ble Court of Sessions, Mavada, to be graciously pleased to declare;

1. That the A1 and A2 as guilty for offence under Section.186 of the Rabat Penal Code, 1860.
2. That A1 is guilty for murder under Section 302 r/w 34 of the Rabat Penal Code, 1860.
3. That A2 and A3 are guilty for abetting murder under section 107 and 302 read with 34 of the Rabat Penal Code, 1860.

And convict all the accused herein for the aforesaid offences and pass any other order in favour of the prosecution that it may deem fit in the ends of equity, justice and good conscience.

Place:

S/d _____

Date:

(Counsel on behalf of the Prosecution)