

TEAM CODE:

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

3RD - 5TH SEPTEMBER, 2016

**BEFORE
THE HONORABLE COURT OF SESSIONS, MAVADA**

S.C. No. 101 of 2016

MEMORANDUM FOR DEFENCE

In the Matter of

State of Jagutar..... Prosecution

vs.

Abhishek, Angad & Dushyant..... Accused/Defense

**MEMORIAL SUBMITTED BY
COUNSELS FOR THE DEFENSE**

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LIST OF ABBREVIATION

A.I.R	:	All India Reporters
All	:	Allahabad High Court
Anr	:	Another
AP	:	Andra Pradesh
B.P.C	:	Bharat Penal Code
Bom.	:	Bombay
BomLR	:	Bombay Law Reporter
Cal	:	Calcutta High Court
CrI.A	:	Criminal Appeal
Cr.Pc	:	Criminal Procedure Code
Cr.L.J	:	Criminal Law Journal
PW	:	Prosecution Witness
DW	:	Defense Witness
ECC	:	Essential Commodities Cases
Edn.	:	Edition
GLR	:	Gujarat Law Reporter
Guj	:	Gujarat
Hon'able	:	Honorable
KLJ	:	Kerala Law Journal
Mad	:	Madras
MO	:	Material Object
No.	:	Number
Ors.	:	Others

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p.	:	Page
Pat LJR	:	Patna Law Journal Reports
PH	:	Punjab & Haryana High Court
PW	:	Prosecution Witness
QB	:	Queen's Bench
r/w	:	Read with
SC	:	Supreme Court
SCC	:	Supreme Court Cases
SCR	:	Supreme Court Reporter
Sec.	:	Section
SLP	:	Special Leave Petition
Supp.	:	Supplementary
Tr & Coch	:	Travancore & Cochin
u/s	:	Under Section
v.	:	Versus
vol.	:	Volume
WB	:	West Bengal

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35. *State v. Babulal* (1956 Bom LR 1021)
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STATEMENT OF JURISDICTION

The counsels for defense, appearing on behalf of the accused, humbly submit this memorandum under Sec. 314 of the Code of Criminal Procedure, 1973. The memorandum sets forth the facts, contentions and arguments in the present case.

The counsel humbly submits that this Hon'ble Court has jurisdiction to try the instant matter under Sec. 177 read with Sec. 209 of the Code of Criminal Procedure, 1973.

Sec. 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

Sec 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.

STATEMENT OF FACTS

Abhishek and Angad are both students of Presidency College doing Masters Degree in Political Science and Administration. They both belong to a poor and minority community named Lepat. Being the voice of the suppressed and needy and due to his generosity, Abhishek was elected as the Union President of the Presidency college. As he was part of certain movements against the atrocities of the ruling party, especially towards the minority communities, he and his friends were continuously being targeted and attacked by local goons and police, who were the puppets in the hands of the ruling party. Abhishek and Angad used to accompany each other especially their lady classmates due to the immense fear of them being attacked by people close to the ruling party especially Dinesh, the son of MLA of the ruling party and his friends. This fear got justified when Tanya and Natasha two of Abhishek's friends had to face the attack from Dinesh and his friends even though Abhishek and Angad accompanied them. They couldn't even seek the protection from police as they were fighting against the atrocities of the ruling party and police had chosen to be in the favor of money and muscle power which they made clear through Amit Chaudhary, the inspector. Amit Chaudhary has expressed his vengeance against the accused by supporting the social evils and by threatening them, stating that he won't even mind to kill them if he finds it necessary. Abhishek and his friends were continuously being attacked by Dinesh and his gang. On April 7th, Abhishek and his friends were attacked by Dinesh outside the college accompanied by Mr. Amit Chaudhary, who was highly drunk. When it was clear to Abhishek and Angad that Mr. Amit Chaudhary was out of control and that he was going to cause harm to their lives they ran and never dared to look back.

STATEMENT OF CHARGES

CHARGE I: Charges under section, 304 read with 34, 186 of Rabat Penal Code have been charged against Mr .Abhishek Lepat to which the accused has pleaded not guilty.

CHARGE II: Charges under section, 304 and 107 read with 34, 186 of Rabat Penal Code have been charged against Mr. Angad Lepat to which the accused has pleaded not guilty.

CHARGE III: Charges under section, 304 and 107 read with 34 of Rabat Penal Code have been charged against Mr. Dushyant to which the accused has pleaded not guilty.

SUMMARY OF ARGUMENTS

I. WHETHER THE ACCUSED ARE LIABLE TO BE PUNISHED FOR OFFENCES ALLEGED UNDER SECTION 304 OF RABAT PENAL CODE

1.1 *The prosecution has failed absolutely to prove that the accused has committed the alleged crime.*

1.2 *There is not enough material to frame a charge under section 304 of IPC.*

1.3 *There is no substantive evidence to explain Amit Chaudhary's death.*

1.4 *PW1 and PW2 out of their vengeance towards the accused implicated the accused in the crime.*

II. WHETHER ABHISHEK AND ANGAD ARE LIABLE TO BE PUNISHED UNDER SECTION 186 OF RPC?

2.1 *There is no voluntary obstruction from the part of the accused.*

2.2 *Mr. Amit Chaudhary was not in discharge of any public function.*

III. THE ACCUSED MR. ANGAD AND MR. DUSHYANT ARE NOT LIABLE TO BE PUNISHED UNDER SECTION 107 OF RPC.

3.1 *No acts constitute the offence of abetment.*

3.2 *The entire allegations do not conclusively establish the guilt of the accused.*

3.3 *There can be no abetment without knowledge and intention*

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IV. WHETHER ACCUSED HAD COMMON INTENTION TO COMMIT CRIMES

4.1 There was no pre-planned arrangement

4.2 The acts were not in furtherance of the common intention

ARGUMENTS ADVANCED

ISSUE 1**WHETHER THE ACCUSED ARE LIABLE TO BE PUNISHED FOR OFFENCES ALLEGED UNDER SECTION 304 OF RABAT PENAL CODE**

The edifice of the judicial system in India rests on the principle, 'it is better and more satisfactory to acquit a thousand guilty than to condemn a single innocent'. This sacred principle is unimpeachably embedded in the criminal laws of India so that the rule in its sublime semantics does not become a rope of sand losing its righteous meaning and moral quintessence, causing a miscarriage of justice. The defense humbly submits before the Hon'ble Court of Sessions that the accused is not liable for the offences punishable under Sec. 304.

1.1 THE PROSECUTION HAS FAILED ABSOLUTELY TO PROVE THAT THE ACCUSED HAS COMMITTED THE ALLEGED CRIME.

Homicide is the killing of a human being by a human being.¹ Section 304 which deal with culpable homicide not amounting to murder proposes intention or knowledge regarding the injury or death as an essential to constitute the crime. In the present case, the prosecution could neither make out the presence of these ingredients nor could they point out any acts from the part of the accused which leads to the death of Mr. Chaudhary. In *Alister Antony Pareira v. State of Maharashtra*² Hon'ble Apex Court held that for punishment under Sec. 304 of Rabat Penal Code (hereinafter referred to as RPC), the prosecution must prove the death of the person in question;

¹ Stephen, *A History of the Criminal Law of England*, Vol. III, P.1, (1883); Turner, *J.W.C Russell on Crime*, 12th Edn. P. 399-464 (1964)

² (2012) 2 SCC 648

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that such death was caused by the act of the accused that the accused intended by such act to cause death or to cause such bodily injury as was likely to cause death.

In *Brijlalpd Sinha v. State of Bihar*³ it has been clearly laid down that where the act is not established without any room for doubt against the accused, the accused shall be rather presumed innocent.

The accused Abhishek (herein after referred to as PW1) and Angad (herein after referred to as PW2) were accompanying two of their friends who were continuously subjected to harassments by local goons who has immense support from the police and ruling party. On April 7, while they were waiting in the bus stop with their friends they were attacked by a gang of local goons and Inspector Chaudhary, who was drunk and out of mind and was about to shoot PW1. PW1 and PW2 ran for their lives and never dared to look back. In the instant case, there is nothing material on the part of prosecution to make out criminality of the accused nor could they point out any act from part of the accused that in itself result in the death of deceased. Therefore, in the case at hand, in the absence of basic elements proposed in Sec. 304 RPC, the accused are ought to be acquitted from the charge of culpable homicide.

1.2 THERE IS NOT ENOUGH MATERIAL TO FRAME A CHARGE UNDER SECTION 304 OF IPC.

Section 299 of IPC explains Culpable Homicide and put forth the following ingredients as essential to constitute Culpable Homicide.

1. Causing of death of human being
2. Such death must have been caused by doing an act

³ (1998) 5 SCC 699

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- (i). With the intention of causing death; or
- (ii). With the intention of causing such bodily injury as is likely to cause death; or
- (iii). With the knowledge that the doer is likely by such act to cause death.

In the present case there is neither any intention nor knowledge from the part of accused to cause death or any kind of injury to the victim

Black's Law Dictionary defines intention as the willingness to bring about something planned or foreseen which is completely absent in the present case.

The fact that the death is caused is not enough to feed the appetite of Indian Judicial system which proudly flaunts the principle of presumption of innocence even for the brutish criminal. According to *Nirbhai Singh*⁴ Death cannot amount to Culpable Homicide unless one of the mental states mentioned in ingredient is present. It is the burden of the prosecution to prove the guilt of the accused and in this instant case, the prosecution has completely failed to point out criminality of the accused and they could not even prove that the death of the victim occurred due to the acts of the accused. Prosecution even failed to make out the basic ingredients of culpable homicide.

1.3 THERE IS NO SUBSTANTIVE EVIDENCE TO EXPLAIN AMIT CHAUDHARY'S DEATH.

In *Lailabha Mohobat Singh v. State of Gujrat*⁵ it was held that evidence offered should connect the injury with weapon and the weapon with the accused. In this case, the prosecution has failed to prove the reason for death and has left behind certain essentials unaddressed. In an unnatural death it is important to explain the cause of death. It should be clear and should answer every

⁴ (1972 CrLJ 1474 MP).

⁵ (1991) 2 Crimes 372 Guj

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question about the death. If the case is entirely depending on unreliable evidence, should be complete and capable of explain every factor contributing towards the death.⁶

The prosecution in the case at hand has completely failed to explain the reason behind Mr. Chaudhary's death. The post mortem report confines itself to a stand that death occurred due to hemorrhage and even the forensic report does not contribute much to this case. It is sad that these days have come when anyone can be charged with serious offences even without any evidential backup.

The prosecution in this case is finding itself in a trouble as they are not even able to explain the reason for death and are crying for punishment of three innocent young men who are going to make our country proud in the near future.

1.4. PW1 AND PW2 OUT OF THEIR VENGEANCE TOWARDS THE ACCUSED IMPLICATED THE ACCUSED IN THE CRIME.

The core and essence of every legal system, irrespective of its evolution, rests on the underlying principle '*Fiat justitia, ruat coelum*' which means justice must be done though the heaven should fall down.⁷ But, vengeance has become one of the greatest thwarts that often make judiciary betray in the pursuit to uplift its essence. This vengeance is nothing but the monster of appetite, forever bloodthirsty and never filled. It brings out the hidden anger to express as retaliation thus often resulting in the bloodshed of the innocent. In this case, the charges against the accused are the pure child of vengeance.

Here it is to be noted that the accused were under the radar of the Government of Rabat and were waiting to get an opportunity to strike their enemies down. Firstly, it was because of the victory

⁶ *Padelaveera Redid v. State of Arunachal Pradesh* (AIR 1990 SC 79)

⁷ *Ramakant Rai v. Madan Rai* Cr LJ 2004 SC 3663

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION, 2016 of DW1, to the post of Union President of Presidency College, which is one of the most prestigious college elections in the country, overcoming the huge influence of the ruling party of Rabat, in this college. Hence, there emerged a sort of jealous against them. Secondly, this jealous of the ruling party in Rabat developed into dislike as DW1 belongs to the most backward community in Rabat i.e., Lepat, whom the majority often wishes to suppress. Thirdly, this dislike grew up to the level of vengeance as DW1 and DW2 started using the platform of Union President to bring into light the atrocities committed by the ruling party against Lepat community and began criticizing these activities in the most democratic and effective manner, which in turn exposed and tarnished the image of the ruling party and the Government of Rabat. Therefore, Government of Rabat was waiting to eliminate their political threat, in the most treacherous manner, in order to regain the lost image of the party. It was for this purpose does the complainant, Dinesh, who was the son of the MLA, who belong their party was used.

Therefore, this is capable enough to giving rise to a fair doubt based upon reason and common sense⁸ and thus it is contented that the case is nothing short of a fabricated one arising out of the grudge and enmity of the complainants against the accused. Hence, as in *State of Haryana and Others v. Ch. Bhajan Lal*⁹ this case is squarely a product of wreak vengeance¹⁰ and therefore the accused are ought to be acquitted.

⁸ *Ramakant Rai v. Madan Rai* Cr LJ 2004 SC 36

⁹ AIR 1993 SC 1348

¹⁰ *Paramahansa Yadav* 1987 Cri.L.J

ISSUE II**WHETHER ABHISHEK AND ANGAD ARE LIABLE TO BE PUNISHED UNDER SECTION 186 OF RPC?**

Sec. 186 RPC stipulates that for punishment under the section, the prosecution has to establish beyond any reasonable doubt that

- (i) the obstruction to the public servant was voluntarily, and
- (ii) the obstruction was done in the discharge of the public functions¹¹

It is humbly submitted before this Hon'ble Court that there is nothing incriminating against the accused to prove the same.

2.1 THERE IS NO VOLUNTARY OBSTRUCTION FROM THE PART OF THE ACCUSED.

It is humbly submitted before the Hon'ble Court that the accused have not involved in voluntarily obstructing the police officer. According to Nelson, the term 'voluntarily' implies an intention. The gist of the offence under this section lies in the intention of the accused to cause interference with the public servants discharge of duty.¹² To constitute an offence under this section, the obstruction must be intentional and direct.¹³ The intention of the accused have to be collected from the evidence of what he did on the occasion. Probability is a guide but not conclusive. It is humbly submitted by the council for defense that it is the duty of the prosecution to prove the gist of the intention in accused without giving any room for doubt.

¹¹ *Santhosh Kumar Jain v. State* AIR 1951 SC 201; *Durgacharan Naik v. State of Orrisa* AIR 1966 SC 1775

¹² *Emperor V Sulaiman Abba* 35 CrLJ 516

¹³ (1 UBR 266)

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In *State v. Babulal*¹⁴ it was held that, obstruction under this section presupposes an element of the use of illegitimate force.

Further in *Phudki v. State*¹⁵ it was held that obstruction denote overt act in the nature of actual violence. The court made clear that, obstruction or resistance offered to a public servant in the discharge of his duties or public functions has authorized by law is the main ingredient to constitute the crime under Sec. 186. In the case at hand, the prosecution has completely failed to establish any overt act by the part of accused. In order to drag the accused to this crime primarily the prosecution has to prove there was a performance to a duty from the part of Mr. Amit Chaudhary and that act was interviewed by the accused, to which there is no substantiating evidence available. The miracle is not to fly in air or to travel to the moon but to live on the earth. In the present case, it is to be noted that the accused, two innocent students who fought against the anti-minority campaign of the state government, were merely targeted by the local goons with the support of inspector Chaudhary, who in turn took this opportunity to please and thank the ruling party, who unduly provided “shelter” to him when he was in hot waters. Thus, it seems that the crime committed by the accused was that they weren’t ready to meet their fate, instead Amit Chaudhary, himself, has designed it for them. Therefore, it is humbly pleaded before the Hon’ble Court that the accused didn’t caused any obstruction to the function of a public servant.

2.2 MR. AMIT CHAUDHARY WAS NOT IN DISCHARGE OF ANY PUBLIC FUNCTION.

The public function contemplated by the section was defined in *Lilla Singh v. Emperor*¹⁶ as legal or legitimately authorized public function and not act that public functionary which may choose

¹⁴ (1956 Bom LR 1021)

¹⁵ (AIR 1955 All 104)

¹⁶ ILR 22 Cal 286; *Madhu Limaye vs The State Of Maharashtra* 1978 AIR 47

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to take upon himself to perform. It is the duty of the prosecution, while trying to prove the alleged crime against the accused, the prosecution should at least be able to point out the 'public function' which got offended or obstructed by the act of the accused.¹⁷ Scrutinizing the term public function set forth the principle that any public function should be in benefit of the public.¹⁸ The mere fact of public servant claiming that he was acting in the discharge of public function won't be sufficient to give his acts the status of public function. It is essential that a public servant must be in charge of some public duty.¹⁹ Furthermore, for conviction under this section is essential to establish the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions, as authorized by law. The mere fact of the public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence".²⁰ Further, in *State v. Dashrath Shah*,²¹ court went a step ahead and held that the prosecution has to specifically prove that the accused was obstructing the public servant in exercising a legal procedure. The burden of proof in proving the same rests on the prosecution²². However, in the case at hand, there is not even an iota evidence for prosecution to prove it beyond any reasonable doubt. The fact that Mr. Chaudhary was not in uniform and immensely drunk,²³ etc., also contributed to this argument. Mr. Amit Chaudhary was representing his self-interest by attacking the accused, along with the interested witness and their friends.

Further court in *Padam Sen v. State U.P.*²⁴ held that a person acting without a post or office is not a public servant within the meaning of the section. This foresaid circumstances amounts to a

¹⁷ *Perianna Muthirian vs M. Vengu Aiyar And Ors.* (1929) 56 MLJ 208

¹⁸ *Harbilas v. Crown*, [1950 EP 187: 5 DLR (Simla) 104; 4 AI Cr D 264]

¹⁹ *Nazamuddin v. Queen Empress* (ILR 28 Cal 344)

²⁰ *Baroda Kanto Pramanick* (1896) 1 CWN 77; In Case 32 (1987) Dlt 333 *Chaman Lal vs State*, Where It Has on 23 August, 2010; *State vs . Tej Bahadur* on 4 May, 2012

²¹ *State vs . Dashrath Shah* on 16 July, 2014

²² *State vs . Avtar Singh And Ors.* on 27 May, 2014

²³ Forensic Report, Annexure 4

²⁴ AIR 1961 SC 218

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larger lacunae in the prosecution case which whereby emphasis the innocence of the accused. Hence, it is clear and cogent that Mr. Chaudhary was completely out of authority or jurisdiction. Therefore it is humbly submitted before this Hon'ble Court that Sec. 186 does not cover the case of a public servant, who, instead of acting in the discharge of his public functions as there contemplated, is acting wholly outside his jurisdiction or authority²⁵ and thus the accused are ought to be acquitted.

²⁵ *Emperor v. Shivdas Omkar* (1912) 15 Bom. L.R. 315, *Queen-Empress v. Tulsiram* (1888) I.L.R. 13 Bom. 108

ISSUE III**THE ACCUSED MR. ANGAD AND MR. DUSHYANT ARE NOT LIABLE TO BE PUNISHED UNDER SECTION 107 OF RPC.**

It is humbly submitted before the Hon'ble Court that the charges against the accused are falsely implicated by the prosecution. The accused has done no act which will amount to abetment. Hence the allegation of the offence is baseless.

3.1 NO ACTS CONSTITUTE THE OFFENCE OF ABETMENT.

Black's Law Dictionary defines "Abettor" as "A person who instigates the commission of a crime or advice and encourages others to commit it. The ingredients of abetment under RPC are;

1. Instigating a person to commit an offence
2. Engaging in a conspiracy to commit it; or
3. Intentionally aiding a person to commit it

In *Corpus Juris Secundum*, the meaning of the word 'abet' has been defined as meaning to aid; to assist or to give aid; to command, to procure, or to counsel; to countenance; to encourage, counsel, induce or assist to encourage or to set another on to commit." An act of an individual, which aids, helps or assist another to commit a crime, falls within the offence of abetment. In the instant case, there was no act of any aid, assistance or encouragement from the part of the accused.

In the case *Amiruddin*²⁶ it is laid down that a person is said to instigate another to an act, when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation or of hints, insinuation or encouragement. In the

²⁶ (1922) 24 Bombay LR 534,542]

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instant case there is no such ingredient of abetment by instigation by any means. Mr. Angad, friend of Mr. Abishek who was accompanying him to the bus stop and has taken no part in the commission of any alleged offence. In instigation, an approval of an act is necessary but in this case, no act is done from the part of the accused Mr. Abishek to give any passive or unresponsive approval.

3.2 THE ENTIRE ALLEGATIONS DOES NOT CONCLUSIVELY ESTABLISH THE GUILT OF THE ACCUSED.

In order to constitute abetment, the abettor must be shown to have intentionally aided the commission of the crime.²⁷ In the instant case, the prosecution has miserably failed to establish the substantive charge of the accused. When the substantive offence is not established and the principal offender is acquitted, then the charge of abetment also fails and the alleged abettor cannot be held guilty of the offence.

A line of Supreme Court rulings from *Faguna Kanta Nath v. State of Assam*,²⁸ *Jamuna Singh v. State of Bihar*²⁹ to *Madan Raj Bhandari v. State of Rajasthan*³⁰ were considered by the Supreme Court on *Haradhan Chakrabarty v. Union of India*³¹ in which the accused was set free from the offence of abetment because of the reason that the principal offender was acquitted. The mere fact that Mr. Angad was friend of Mr. Abishek won't drag him to the crime of abetment.

3.3 THERE CAN BE NO ABETMENT WITHOUT KNOWLEDGE AND INTENTION

²⁷ *Shri Ram v. State of Uttar Pradesh* (1975)3SCC 495

²⁸ AIR 1959 SC 673, (1959) Cr LJ 917 (SC)

²⁹ AIR 1967 SC 553, (1967) Cr LJ 541 (SC),

³⁰ AIR 1970 SC 436, (1969) 2 SCC 385

³¹ AIR 1990 SC 1210

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Uttering the inducement accompanied by the required *mens rea* constitutes the crime of abetment.³² “*Mensrea*” element is a *sine qua non* for offences including abetment under RPC.³³ It was laid down in *Shrilal v. State*³⁴ that in order to secure a conviction for abetment of Culpable Homicide not amounting to murder under this section, it is essential for the prosecution to prove that the accused knew that the actual murderer did intent to commit the murder. In the instant case, the accused Mr. Abishek lacked the intention to commit the alleged offence. Prosecution has miserably failed to prove the alleged offence against the principal accused. Chinnappa Reddy, J. In *State of Maharashtra v. Mohd. Yakub*³⁵ held that “In order to constitute [an attempt] first there must be an intention to commit a particular offence, second , some act must have been done which would necessarily have to be done towards the commission of the offence and, third, such act must be ‘proximate’ to the intended result. The measure of proximity is not in relation to time and action but in relation to intention. In other words, the act must reveal, with reasonable certainty, in conjunction with other facts and circumstances and not necessarily in isolation, an intention, as distinguished from a mere desire or object, to commit the particular offence, though the act by itself may be merely suggestive or indicative of such intention but that it must be, that is, it must be indicative or suggestive of the intention”. However, there is no evidence whatsoever to prove the same.

As held in *Faguna Nath v. State of Assam*³⁶, *Madan Raj Bhandari v. State of Rajasthan*³⁷, *Haradhan Chakrabarty v. Union of India*³⁸ unless the substantive offence against the principle offender is established, the question of abettor being held guilty under these circumstances does

³² R P Kathuria, *Supreme Court on Criminal Law*, 3rd Edn. Kathuria’s Publication (1984)

³³ *People’s Union for Civil Liberties v. Union of India* (2004) 9 SCC 580)

³⁴ 1953 MB 155(156):54 Cr LJ 995

³⁵ (1980) 3 SCC 57

³⁶ (AIR 1958 SC 673)

³⁷ (1969) 2 SCC 385

³⁸ (1990) 2 SCC 143

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not arise. Hence Mr. Angad and Mr. Dushyant are not liable to be punished under the said
provision of RPC.

ISSUE IV**WHETHER ACCUSED HAD COMMON INTENTION TO COMMIT CRIMES**

It is humbly submitted that in the present case, there is nothing available for the prosecution to prove that the accused had done the crime in furtherance of a common design. In a plethora of cases, Courts have restated that the essential ingredients of Sec. 34 of RPC are:

- (i) Common intention to commit a crime, and
- (ii) Participation by all the accused in the act or acts in furtherance of the common intention.³⁹

To charge a person under this section, it must be established that the accused shared a common intention with another person or persons to commit a crime and subsequently the crime was perpetrated.⁴⁰ In other words, to bring the present case under Sec. 34, it is the burden of prosecution to establish that there was pre-planned illegal act done by one or more persons in furtherance of the common intention of all those persons to commit the act. However, it is submitted before the Hon'ble Court that in this case, there is nothing conclusively present to establish the same.

4.1 THERE WAS NO PRE-PLANNED ARRANGEMENT

It is humbly submitted before this Hon'ble Court that under Sec. 34 it is *sine qua non* that the act must be the result of a pre-planned act. However, it is to be noted that evidences presented to prove the same by the prosecution are not reliable and conclusive. Hence, pre-planned arrangement can never be established, thus making Sec.34 not applicable in the present case.

Furthermore, from the prosecution case read with the charges framed, it can be inferred that the case revolves around a sudden and grave provocation and occurred in a spur of moment. In such

³⁹ *Mohd. Aslam v. State of M.P.*, AIR 1981 SC 1735

⁴⁰ *Garib Singh v. State of Punjab*, 1972 Cr LJ 1286

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION, 2016 scenario, the contention of the prosecution that there was pre-planned arrangement for days together seems to be absurd, fanciful and contradictory. Assuming but not contending that there was indeed an exhortation on Dushyant's behalf asking Abhishek to kill Mr. Chaudhary, the principle used in *Harpal Singh v. Devinder Singh*⁴¹ is to be referred to wherein the Court has laid down that a mere exhortation to do an act is not at all necessarily sufficient to show an intention. Apart from that, knowledge of a likely result cannot also be construed to be an interest to bring out that result.⁴² Therefore, it is submitted that the prosecution either by direct or circumstantial evidence, has got nothing sufficient, reliable and conclusive to prove the meeting of minds and hence, the pre-planned arrangement.

4.2 THE ACTS WERE NOT IN FURTHERANCE OF THE COMMON INTENTION

The essence of common intention is that the person who instigates or aids in the commission of a crime must be present at the actual scene of the crime for the purposes of facilitating or promoting the offence, the commission of which is the aim of the joint venture.⁴³ This means that the persons must be physically present at the actual commission of crime coupled with the actual participation.⁴⁴ Most interestingly, in the present case, it is evident *prima facie* from the cooked up story itself, that apart from the absence of the co-accused from the crime scene, they even did not know what happened. Therefore, the counsels for defence would like to contend that prosecution by the framing of this case itself admits that the Angad and Dushyant were not active participants in the crime. Since the prosecution has failed miserably even to bring out the basic ingredient of Sec. 34, hence, it is submitted before this Hon'ble Court that, in the light of above said arguments accused are ought to be acquitted.

⁴¹ AIR1997 SC 2914

⁴² *Sulaiman v. King*, AIR 1941 Rangoon 301

⁴³ *Fazal v. State*, 1953 R.L.W. 354.

⁴⁴ *Hethuba v. State of Gujarat*, A.I.R. 1970 S.C. 1266.

LIST OF THE DEFENCE WITNESSES

WITNESS NO:	NAME
DW1	Abhishek
DW2	Angad
DW3	Dushyant
DW4	Taniya
DW5	Natasha

LIST OF DOCUMENTS

DOCUMENT NO.	DOCUMENT DESCRIPTION
Annexure1	First Information Report
Annexure2	Panchnama/Mahazar
Annexure3	Post Mortem Report
Annexure4	Forensic Report
Annexure5	Statement of Witnesses
Annexure6	Report of Investigating Officer

LIST OF MATERIAL OBJECTS

MATERIAL OBJECT NO.	DESCRIPTION
MO1	The holster carrying the gun of the victim
MO2	Metal Rod (weapon used to hit the victim)
MO3	Picture of the stump of the tree on the pavement
MO4	Internet browsing history print outs taken from the computer of the accused 1
MO5	Details of call logs between all the accused

APPENDIX

RELEVANT EXTRACTS OF THE INDIAN PENAL CODE, 1860**Sec.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 the persons is liable for that act in the same manner as if it were done by him alone.

Sec. 107. Abetment of a thing

A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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

Sec. 186. Obstructing public servant in discharge of public functions

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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.

Sec. 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.

Sec. 300. Murder

Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

Sec.302. Punishment for murder

Whoever commits murder shall be punished with death, or [imprisonment for life], and shall also be liable to fine.

Sec.304. Punishment for culpable homicide not amounting to murder

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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.

PRAYER

Wherefore, in the light of the facts stated, arguments advanced and authorities cited, it is most humbly prayed and implored before the Hon'ble Sessions Court, that it may be graciously pleased to adjudge and declare that:

1. The Accused be held not guilty for the charges of culpable homicide not amounting murder u/s 304, r/w 34 of the R.P.C.
2. The Accused be held not guilty of obstructing public servant u/s 186, r/w 34 of the R.P.C
3. The Accused be held not guilty for the charge of abetment u/s 107, r/w 34 of the R.P.C.

Also, pass any other order that it may deem fit in the favour of the DEFENSE to meet the ends of equity, justice and good conscience.

For this act of Kindness, the Defense shall duty bound forever pray.

Place: MAVADA

Sd/-

Dated: 4th September, 2016

Counsel for Defense