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 ACCUSED

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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

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32. Dharminder v. State of H.P., AIR 2002 SC 3097.
33. *Ram Singh v. Col. Ram Singh, AIR 1986 SC 3.*
34. *Kulwant Singh Vs State of Punjab*(2007)15 SCC 670.
35. *Ramesh Kumar Vs state of Rajastan* (2001) 9 SCC 618.
36. J*agdeo Singh and Ors. Vs. The State*, 2015IIIAD(Delhi)268
37. *Krishnan Vs State* (2003) 7 SCC 56.
38. *Mrinal Das v. State of Tripura*, (2011) 9 SCC 479.

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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 to 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 15th,2016	Rally in support of Ram, Organized by Abhishek.
4	March 28th,2016	Tanya and Natasha teased by two boys in presence of Abhishek and Angad.
5	March 30th,2016	Above episode repeated again, the two boys threatened Abhishek and Angad
	March 30th Evening	Police officer threatens Abhishek and Angad.
6	April 2nd,2016	Abhishek discussed with his friend Dushyant who is a local leader of the Political party to which Abhiskek's College Union

		is affiliated.
	April 2nd 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 7th,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. Mr.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.

SUMMARY OF ARGUMENTS

1. A1 and A2 are not guilty of obstructing public servant in discharge of his public functions for the alleged offence under section 186 of Rabat Penal Code, 1860.

It is humbly submitted before this Hon'ble Court that A1 and A2 under section 186 of the Rabat Penal code, 1860 as the mandatory prerequisites and ingredients to prove the charge under this section are not satisfied. The prosecution failed to follow the mandatory procedure under section 195(1)(a) of Cr.P.C. 1973 which is a prerequisite to initiate a charge under section 186 of Rabat Penal Code. The prosecution failed to prove that A1 and A2 had done an overt act to obstruct the police officer from discharging his public function. Further, the prosecution failed to establish that the public servant was acting lawfully at the time of the alleged offence.

2. A1 is not guilty of Manslaughter of the deceased under Section 304 of Rabat Penal Code, 1860.

It is humbly submitted that the accused, A1 cannot be convicted under section 304 of the RPC for Manslaughter of the deceased, as the prosecution has failed to prove his guilt beyond reasonable doubt. It has been conclusively established by the acts of the accused that [2.1] He was acting in private defence [2.2] Mens rea is completely absent. It is further contended that, the case of the prosecution has to be dismissed on the grounds that [2.3] It relies on the testimony of partisan and highly interested witnesses [2.4] Inconclusive medical evidence coupled with [2.5] faulty investigation, all creating the existence of benefit of doubt thereby the accused is entitled to honorable acquittal.

3. <u>A2 and A3 are not guilty for abetment under Section 107, 304 r/w section 34 of RPC</u>.

It is humbly submitted before this Hon'ble court that A2 and A3 are not guilty for abetment under Section 107,304 r/w section 34 of RPC. The evidence on record does not prove beyond reasonable doubt that A2 and A3 had the intention to abet the commission of the alleged offence. It is further contented that the prosecution and the complainant had conspired and falsely incriminating the accused in this case as they belong to the opposition party and as they are fighting for their lawful rights thereby the prosecution intends to suppress the students from exercising their lawful rights.

ARGUMENTS ADVANCED

1. A1 and A2 are not guilty of obstructing public servant in discharge of his public functions for the alleged offence under section 186 of Rabat Penal Code, 1860.

It is humbly submitted before this Hon'ble court that A1 and A2 are not guilty of obstructing public servant in discharge of his public functions for the alleged offence under section 186 of Rabat Penal Code, 1860 as the mandatory prerequisites and ingredients to prove the charge under this section are not satisfied.

[1.1]The charge under section 186 is illegal since no sanction was obtained as per Section 195 of the Code of Criminal Procedure, 1973(here after Cr.P.C).

It is humbly submitted that to initiate prosecution under section 186 it is necessary to see that the complaint is filed under S.195(1)(a) of Cr.P.C., by the concerned public servant or his superior officer to whom he is subordinate.[1] A person cannot be prosecuted and convicted under section 186 without there being a complaint in writing as require by Section 195, Cr.P.c under the said provision, complaint should be filed be filed before magistrate.[2] The said provision requires a complaint for offences under sections 172-188 Rabat Penal code, to be filed by the public servant concerned or by some other public servant to who he is administratively subordinate.[3]

It is humbly submitted that in the instant case a complaint was filed under the aforesaid provision. When police report discloses an offence under section 186, IPC attempting to

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[1] *Oduvil Devaki Amma v. State of Kerala*, 1982 Cr LJ 11(Ker)
[2] *State of Rajastan v. Chaturbhuj*, 1983 Cr LJ NOC 5 6(Raj)
[3] Daulat Ram, 1962(2) Cr LJ 286 (SC)

circumvent Section 195, Cr.P.C. is bad and cognizable thereon illegal.[4] Therefore, as the aforesaid condition is not satisfied the charge under section 186, IPC is illegal.

[1.2] No obstruction if no overt act was done.

Section 186 in the Rabat Penal Code:

"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."

It is humbly submits that the perusal of this section provides for voluntary obstructing a public servant in the discharge of his duties. It must be shown that the obstructing or resistance was offered to a public servant in the discharge of his duties or public functions as authorized by law. The word 'obstruction" connotes some overt act in the nature of violence or show of violence.[5]

In the instant case there is no evidence on record to show that A1 and A2 have done any overt act or use of any physical means by the accused. On the contrary, the facts of the case clearly establish that it was the public servant who has done an overt act and used physical means by slapping A1 and violently threatened him without any lawful reason.

[1.3] Inspector was not discharging his public functions at the time of the alleged functions.

It is humbly submitted that one of the main condition to prove charge under section 186 of the Rabat Penal Code is that the public servant should be discharging his public servants at the time of the alleged offence.

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[4] *H.N. Nanjegowda v. State of Karnataka*, 1988 Cr LJ 807 (Kant)
[5] *Phudki v.State* AIR 1955 All 104

Arguendo, even if the there was an obstruction or an overt act on the part of the accused the accused will not be liable under this section as there is no evidence on record to establish that the Inspector was doing his public functions at the time of the alleged offence. Moreover, it is pertinent to note the facts on record clearly show that at the time of alleged offence the Inspector was not in police uniform[6] which conclusive proves that the inspector was not discharging his public functions.

2. A1 is not guilty of Manslaughter of the deceased under Section 304 of Rabat Penal Code, 1860.

It is humbly submitted before this honourable court that the accused, A1 cannot be convicted under section 304 of the RPC for Manslaughter of the deceased ,as the prosecution has failed to prove his guilt beyond reasonable doubt. It has been conclusively established by the acts of the accused that **[2.1]** He was acting in private defence **[2.2]** Mens rea is completely absent. It is further contended that, the case of the prosecution has to be dismissed on the grounds that **[2.3]** It relies on the testimony of partisan and highly interested witnesses [2.4] Inconclusive medical evidence coupled with **[2.5]** faulty investigation, all creating the existence of reasonable doubt

[2.1]The accused was acting in private defence

A state can never extend its help t**o** all at all times and in all cases. In such a situation, an individual, in pursuit of his basic instinct of self-preservation, will be forced to resort to all possible means to protect at his command to protect himself and his property. He is neither expected to surrender not to flee, but to hold his ground and to quell the imminent threat and to

[6] Annexure-3

repel it.[7] He is entitled to stay and overcome the threat.[8] Therefore to prove that the accused acted in private defence the accused submits that [A] the accused responded to an unjustified threat. **[B]** The force used by the accused was necessary to avoid the threat **[C]** The force used by the accused was proportionate **[D]** The accused acted in order to defend himself

[A] *The accused replied to an unjustified threat.*

The heart of the notion of lawful defence is that the victim is posing an unjust threat to the accused. To claim a right of private defence extending to 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[9] such an apprehension of death or grevious hurt should be real and reasonable. It must be present and imminent.[10] Looking at the facts of the case, "suddenly the inspector comes from behind, and slaps Abhishek violently" and threatens him saying " I will teach you a lesson you will never forget, I have taught this lesson to many" [11] Subsequently, there was a quarrel between the accused and the deceased and then he put his hand on the belt[12] to shoot the accused, causing an eminent threat to his life. This is further corroborated with the testimony of PW6 who stated that *"I saw Abhishek and his friend fighting with a tall guy. They were struggling with this guy"*[13]. Also, the statement of DW5 states that "A tall guy (Amit Chaudhary) came crashing in throwing me to the ground"[14] Therefore, it can clearly be inferred that the accused had an unjustified threat and he responded to it, acting purely to protect himself.

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[7] *Jai Dev v. State of Punjab*, AIR 1963 SC 612
[8] *George Dominic Varkey v. State of Kerala* , AIR 1971 SC 1208
[9] *Jagdish* v. State of Rajasthan AIR 1979 SC 1010
[10] *Rameswar v. State (Delhi Administration),* (1981) Cr LJ 1125 (Del)
[11] Moot proposition, pg 3 para 2
[12] Ibid
[13] Moot Proposition pg 18 para 5
[14] Moot proposition pg 17 last para

[B] <u>The force used by the accused was necessary to avoid the threat</u>.

The only question is whether the accused's actions were a reasonable way of preventing an attack. *"The courts are sympathetic to a defendant who is faced with unjustified threat but fails to see a means of escape. As long as the defendant believes that use of force is the only effective way to repel the attack and there is no reasonable means for escape, he will be able to rely on the defence."*[15] With respect to the case in hand, on having a reasonable apprehension of death, the accused had no other means of escape, hadn't he resorted to any means of defence he would have died. He therefore, took a rod which he found, and threw it at the officer from a distance in order to save himself. The same is stated in the testimony of PW6 and DW2 and DW4.

[C] <u>The force used by the accused was proportionate and reasonable to the threat.</u>

An act of self- defence cannot be weighed on golden scales.[16] As a person whose life and property is in immediate peril of harm cannot be expected to use precise force to repel the assailant, and going slightly further when exercising self defence would be allowed by the law.[17] Keeping in view normal human reaction and conduct, the court has to give due weightage to the pragmatic facts that occurred on the spur of the moment on the spot and to avoid a hyper technical approach in considering them. [18]

In the facts at hand, the accused could not be expected to measure his use of force on golden scales as the situation required urgency in thought and action, as there was a person who was already assaulted by the deceased, he almost pointed the gun towards the accused and threatened him, and the accused had to act in order to safeguard himself in the heat of the moment. The

[15] Jonathan Herring, Criminal Law (3rd edn) pg 365
[16] I,Nelson R. A. Indian Penal Code,p. 837 (10th ed 2008)
[17] *Mohd Remzani v.State of Delhi* ,AIR 1980 SC 1341
[18] *James Martin v. State of Kerala* (2004) 2 SCC 203

accused didn't even aim at the deceased and strike a blow on him, he just threw a metal rod at him from a distance which he thought was reasonable in order to negate the apprehension and act of death. Therefore the force used was very reasonable.

[D] The accused acted in order to defend himself.

It needs to be shown that the defendant was not acting out of revenge or any other motive but acting in order to protect himself or any other.[19] It is very clear from the facts in hand that the act happened on the account of unforeseen circumstances, and in the heat of the moment. The situation compelled the accused to do the act. There was no preconceived design or act and harm was not inflicted due to the malice of the accused towards the deceased. There is no evidence from the side of the prosecution to prove the same. Given the available evidence, all the prosecution witnesses testify about the requisite situation which arouse which was the reason for the accused to take such recourse. It was purely done to protect himself.

[2.2]The accused did not intend to kill the deceased

Intention is one of the necessary elements, as specified u/s 299 for the offence of culpable homicide. Two offences involve the killing of a person. They are the offence of culpable homicide and murder. What distinguishes the two offences is the presence of a special mens rea which consists of four mental attitudes in the presence of any of the lesser offence becomes greater. Unless the offence is said to involve any one such mental attitude, it cannot be murder.[20]

It is submitted that, in the present case, A1 cannot be said to have the intention to kill the deceased by throwing the metal rod at him as he did it to save his life.

[19] Jonathan Herring, Criminal law (3rd ed) pg 365
[20] *Rajwant Singh v. State of Kerala*, AIR 1966 SC 1874 at pg 1877.

When the deceased arrived at the spot randomly, crashing towards DW5 and threw her on the ground[21] he slapped Abhishek and violently threatened him saying that he will teach him a lesson[22] he further caught Abhishek by the neck and started abusing him[23] he then, put his hand on the holster and pointed it towards Abhishek. It was on these grounds abhishek inflicted this injury and not with a pre-planned notion. Therefore the allegation of the prosecution that the accused killed the deceased with a pre-planned and pre conceived notion is completely false as the accused had to act upon the circumstances.

It is further submitted that the accused did not have the requisite intention stipulated under section 299 of the IPC. 'Intent" and "knowledge" postulate the existence of positive mental attitude which is of different degrees.[24] The offender should reasonably expect that the consequence of his act would probably result in the death of the person.[25] Knowledge is a question of fact, which connotes certainty and not merely a probability.[26] If admittedly there was no premeditation as the acts of A1 were sudden responses to an unforeseen/emergency situation. Therefore, the necessary knowledge cannot be ascribed to the accused.[27]

[2.3] The prosecution relies on the testimony of highly interested and partisan witnesses.

A witness is is normally considered to be an independent witness unless he springs from the sources which are likely to be tainted such as enemity or relationship amd which make him inclined to implicate the accused falsely.[28]

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[21] Moot proposition pg 17
[22] Moot proposition pg 3
[23] Moot Proposition pg 16
[24] *Jagriti Devi v. State Of Himachal Pradesh* (2009) 14 SCC 771, AIR 2009
[25] *Sham Madhavrao v. State of Maharashtra* (2000) Cr LJ 2389
[26] *Ram Jolaha v. Emperor*, AIR 1927 Pat. 406
[27] *William Slaney v. State of MP*,AIR1956 SC 116.
[28] *Rajaram v. State*(1992) 3 SCC 634

[A] The evidence PW6 is unreliable

The testimony of a partisan or interested witness must be scrutinized with care and caution[29]. PW6 who is the eyewitness to the alleged manslaughter of the deceased is an interested witness. Before proceeding with the testimony of PW6 it must be borne in mind that he himself stated that he never liked A1 and thinks they create false hopes and bad examples to the society. [30]He also stated that it's just natural for them to find and get into unwarranted trouble. Therefore in the light of the above facts it is submitted that the evidence of PW6 is likely to be tainted and this casts a shadow of doubt that his dislike towards the accused made him inclined to implicate the accused falsely. The evidence of PW6 does not inspire confidence and it is unsafe to rely upon it to convict the accused.

[B] PW4 (Complainant) had a motive to falsely implicate the accused

PW4 already had pervious rivalry with the accused. A further perusal of the statement given to the IO goes to suggest that there existed in his mind, hatred and hostility towards A1. There were constant quarrels among him and the accused and he was constantly teasing the girls (D4 and D5). It is not safe to base conviction on the basis of evidence of partisan witness unless some corroboration is found in other evidence or on material record. [31] If such evidence does not satisfy the test of credibility, the court can disbelieve the same.[32]

[29] *Mallana v. State of Karnataka* (2007) 8 SCC 523
[30] Moot proposition, Annexure 5 Page 18
[31] *Satya Narain v.State of M.P*, AIR 1972 SC 1309
[32] *Kulesh Mondal v. State of W.B* (2007) 8 SCC 578

[C] The conduct of PW4 was suspicious and unnatural

The natural conduct of the eye witness is relevant to establish the credibility of the witness.[33] If a witness's behavior is absolutely unnatural, his testimony may not deserver credence and acceptance.[34] If the conduct of the witness is abnormal, he is not to be believed.[35]

In the light of the above authorities, the defence submits that, the conduct of PW4 who is an eye witness and the complainant in the above case was suspicious. The evidence of PW4 as stated to the IO is that the accused randomly, picked up a fight with him and on the intervention of the police officer, Amit Chaudhary, the accused inflicted a blow on the head of the deceased is totally false. It is very strange and unnatural that when PW4 was involved in that scene he could have taken reasonable steps to control the fight or call the police immediately. Although there is no set rule of natural reaction[36] it can be safely assumed that PW4 being educated should have resorted to various other means. Further it is also an established fact he along with PW5 used to constantly tease DW4 and DW5 which itself is evidence of unreliable, bad character. PW4 on seeing the inspector getting hit by the stump of the tree, should have called the Ambulance immediately and taken medical assistance, without the needy, he first went to the police station to lodge a complaint.

Therefore, the conduct of PW4 stands to be highly suspicious and doubtful and it is unsafe to rely on the testimony of such a witness. It casts serious aspersions on the prosecution story.

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[33] *Namdeo v. State of Maharashtra, (2007) 14 SCC 150*
[34] *Shivasharanappa & Ors V.State of Karnataka*, AIR 2007 SC 2143
[35] *Narain v. State, 1984 Cri LJ 528*
[36] *State (Delhi Admn.) V. Laxman Kumar*, 1985 (2) Crimes 758

[2.4] Medical Evidence is Inconclusive

The prosecution has heavily relied on the Post- Mortem report and forensic report to establish the cause of death of the accused. The Autopsy report concludes that death was caused due to hemorrhage [37] it fails to explain the exact place where the hemorrhage was caused and the type of hemorrhage thereto. Also, there is no mention of the nature size of the wounds and the nature of wounds which are very crucial for establishing the nature of the weapon used and the force with which it hit the skull of the deceased. This is very crucial for the prosecution to establish the case as a matter or circumstantial evidence.

Further, *The Medical officer must establish the identity of the deceased and he must record the means of identification. Positive identification is absolutely necessary. The body should be identified by at least one relative or accompanying person and the police officer present, and signatures should be obtained on the postmortem original report to this effect before starting the autopsy.*[38] The absence of such material particulars casts a huge shadow of doubt on the validity of this evidence. It is also a well-established principle that the post mortem or autopsy should be conducted in broad daylight[39]non- compliance of the same would raise large number or doubts and aspersions and there is a very gave possibility that there must have been major omissions and the evidence must have been tampered with.

It is a well settled law that the expert witness is expected to put before the court all materials inclusive of all data, which induced him to come to the conclusion.[40] If the doctor who conducted the autopsy has based his opinion on the post-mortem appearances, as well as the statement of

[37] Moot Proposition, Annexure-3 pg12
[38] Modi's Medical Jurisprudence and Toxicology, 22nd Ed
[39] ibid
[40] *Nagindra Bala v. Sunil Chandra*, AIR 1960 SC 706

police, he should mention in his report, on what basis he formed such opinion.[41] The fact that the post mortem report just states the cause of death and is silent about the reasons behind arriving to that conclusion is highly questionable. It leads to the inference that the evidence might be fabricated. The Apex court held that, credibility of the expert's evidence depends on the reason stated in support of the conclusion and the data and materials furnished which form the basis of his conclusions.[42] The Post mortem report is devoid of such material particulars.

The forensic report[43], which is considered to be the most reliable and precise source of evidence also, doesn't establish the cause of death conclusively, beyond reasonable doubt. It further fails to state the nature, place and cause of wounds. The number of wounds and also the nature of wounds which is an extremely crucial factor for the prosecution to establish the actus reus of the accused. It is also contended that out of the 6 examinations requested, only the examination of the skull and blood was conducted. There is a possibility that there might have been other causes of death along with the alleged cause of death.

Therefore, is is clear that the medical evidence is devoid of material particulars and the cause of death cannot be conclusively established, also there was no blood detected, the cause of death being, hemorrhage. Thus it is unsafe to convict the accused on the basis of this evidence.

[2.5] FAULTY INVESTIGATION

It is humbly submitted that the investigation is perfunctory tainted and prejudiced. The investigator is enjoined upon to unearth the crime and as soon as he receives the information about the crime he is to proceed to the spot, ascertain facts and circumstance of the case inter

[41] *Nihal Singh v. State* ,AIR 1965 SC 26
[42] *State of Himachal Pradesh v. Jai Lal*, 1999 AIR SCW 3309
[43] Moot Proposition, Annexture 4 ,pg 13

alia, to search the places and take into possession the things considered necessary for investigation.[44]

The fact that the position of the body was not recorded by the I.O again casts a serious aspersion on the prosecution story. Therefore there is a grave possibility that vital evidence such as fingerprints, DNA, hair residue and all other important pieces of information must have been lost due to the callous or faulty investigation of the investigating officer. The panchnama[45] states that there was blood on the metal rod and on the stump of the tree the medical evidence is silent about the same. This major discrepancy is fatal for the prosecution in proving circumstantial evidence. Also, the panchnama bears the signatures of other people and not the witnesses directs to the fact that the panchnama itself might have been fabricated. Also, the items and blood samples seized from the crime scene as stated in the panchnama[46] he not been send for detailed forensic examination. There is no evidence to prove that the blood recovered was the blood of the accused. Therefore there is no evidence to link the accused to the alleged crime. There were major omissions in investigation and the investigation seems to be more tainted than real in order to falsely implicate the accused.

The apex court held that, in cases where there are a number of infirmities in the evidence of eye witness the benefit of doubt is given to the accused.[47] Thus no proper handling of investigation, would lead to an acquittal.[48]

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[44] *Amrik Singh v. State of Punjab,* 1983 Cr LJ 1411
[45] Moot proposition, Annexure-2,pg 10
[46] Refer annexure-2 , pg 10, moot proposition
[47] *State of Punjab V. Rakesh Kumar* (1998) Cr LJ 3604 (SC)
[48] *State of AP v. Kowthalam Narasimhula ,* 2001 Cr LJ 722 (SC)

[2.6] REASONABLE DOUBT

In the light of the aforementioned arguments, it is humbly submitted that there exists reasonable doubt and hence the accused should be acquitted of the crime. A reasonable doubt must not be imaginary, trivial or merely possible doubt, but a fair doubt based upon reason and common sense arising out of the evidence of the case.[49]

The burden of proving the right of private defence is not as onerous as that of the prosecution to prove its case. Preponderance of probabilities is in favour of the defence is enough to discharge the burden.[50] The prosecutions arguments are leaning towards the fact that the accused may have committed the crime but they failed to establish the link between may have committed the crime, and must have committed the crime. The gap being a reasonable doubt.[51]

Therefore it is humbly submitted before this hon'ble court that the charge u/s 304 has not been made out against the accused and he should be acquitted for the same.

3. <u>A2 and A3 are not guilty for abetment under section 107, 304 r/w section 34 of RPC.</u>

It is humbly submitted that the evidence on record does not prove that A2 and A3 had the intention to abet the commission of the alleged offence beyond reasonable doubt. It is further contented that the prosecution and the complainant had conspired and falsely incriminating the accused in this case as they belong to the opposition party and as they are fighting for their lawful rights thereby the prosecution intends to suppress the students from exercising their lawful rights.

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[49] *Ramakant Rai v. Madan Rai* ,Cr LJ 2004 SC 36
[50] Dharminder v. State of H.P., AIR 2002 SC 3097
[51] IV Nelson. R. A Indian Penal Code, p. 2905, 10th ed 2008

[3.1] A2 is not guilty for abetment under section 107, RPC

It is humbly submitted that on perusal of the evidence on record none of the three ingredients for abetment is fulfilled to prove the charge of abetment against A2. There is no participation of A2 so as to help or move the offender in any way towards the commission of the alleged offence. For constituting offence of abetment, intentional and active participation by the abettor is necessary.[52] Therefore, A2 is not liable to be charged under this section.

[3.2] A2 does not have the Mens Rea for abetting the alleged offence.

It is humbly submitted that he requirement of mens rea in abetment is a precondition for liability. The existence of mens rea in the mind of A1 was neither corroborated in the circumstantial evidence nor is it evident from the investigation and the facts on record. The telephonic conversations of A1 and A2 also fail to prove the fact that mens rea was present on part of the A2. Moreover, perusal of the alleged telephone conversations further corroborated the fact that A2 did not possess the requisite mens rea to commit the alleged offence.

It is humbly submitted that under this section it is not only necessary to prove that A2 has taken part in those steps of transaction which are innocent, but it is absolutely necessary to connect him to those steps of transaction which are criminal. The prosecution here has failed to produce any iota of evidence to connect A2 with the transactions which are criminal.

3.3] A3 is not guilty for abetting A1 to kill the police officer.

It is submitted that the prosecution relied on circumstantial evidence and conversations between A1 and A3 to ascertain guilt of A3. A mere word, without necessary intent to incite a person

[52] *Kulwant Singh Vs State of Punjab*(2007)15 SCC 670

uttered in quarrel or in spur of the moment or in anger does not constitute instigation.[53] The prosecution has also relied on telephonic conversations without following the mandatory procedure laid down by the Hon'ble Supreme Court in *Ram Singh v. Col. Ram Singh*,[54] the Court held that:

"The tape recorded conversation can be erased with ease by subsequent recording and insertion could be superimposed. However, this factor would have a bearing on the weight to be attached to the evidence and not on its admissibility. Ultimately, if in a particular case, there is a well-grounded suspicion not even say proof, that the tape recording has been tampered with that would be a good ground for the court to discount wholly its evidentiary value as in In the case of following conditions were pointed out by the Apex Court for admissibility of tape recorded conversation:

a) The voice of the speaker must be duly identified by the maker of the record or by others who recognize his voice. Where the maker has denied the voice it will require very strict proof to determine whether or not it was really the voice of the speaker.

b) The accuracy of the tape recorded statement has to be proved by the maker of the record by satisfactory evidence direct or circumstantial.

c) Every possibility of tempering with or erasure of a part of a tape recorded statement must be ruled out otherwise it may render the said statement out of context and, therefore, inadmissible.

d) The statement must be relevant according to the rules of Evidence Act.

e) The recorded cassette must be carefully sealed and kept in safe or official custody

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[53] *Ramesh Kumar Vs state of Rajastan* (2001) 9 SCC 618.
[54] AIR 1986 SC 3

f) The voice of the speaker should be clearly audible and not lost or distorted by other sounds or disturbances."

In the same case it was held that the tape-recorded evidence is admissible provided that the originality and the authenticity of the tape are free from doubt. It also observed the acceptance and reliability of evidence one should proceed very cautiously and that in these connections on the analogy of mutilated document if the tape-recording is not coherent or distinct or clear, this should not be relied upon.

Moreover section 65B of the evidence act makes it compulsory for the electronic evidence to be admissible is to be certified by an expert without which it stands invalid.

The Hon'ble High Court of Delhi[55] while dealing with admissibility of intercepted telephonic call which were without a certificate/s 65B evidence act held that it is inadmissible and cannot be looked into by the court for any purpose whatsoever. Therefore, as all the aforesaid conditions were not satisfied the telephone conversations in the present case are not admissible as evidence.

[3.4]There exists no common intention between of A1, A2 &A3 to commit the alleged crime.

The Rabat Penal Code defies common intention as-

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

[A] <u>The act of Self Defense does not amount to Criminal Act</u>.

[55] *Jagdeo Singh and Ors. Vs. The State*, 2015IIIAD(Delhi)268

To be guilty of common intention all the accused must have done a criminal act. But the act of A1 was merely self defence and none of them plotted for a criminal act. The prosecution lacks substantive and circumstantial evidence to corroborate the same.

[B] The final act of accused lacks pre-conceived plan between A1, A2 &A3.

It is submitted that to prove common intention among all the accused it is obligatory to prove the existence of a pre-arranged plan. But here A1 only acted in self-defense erasing all the chance of a pre-arranged plan.

Also in order to be guilty under common intention the physical presence of all the several persons at the scene of crime is necessary to bring the case within the purview of section 34.[56] .In the instant case A3 was not present at the scene of offence which exceeds the purview of common intention.

Mere presence of a person at the time of commission of an offence by his confederates is not in itself sufficient to bring this case within the purview of section 34 , unless co mmunity of designs is proved against him.[57]

3.5] No action was done on the part of A1, A2 & A3 in furtherance of common intention.

It is humbly submitted that any act done in furtherance of common intention is a primary act necessary to prove the charge of common intention. The prosecution failed to adduce any evidence on record to establish that the accused have committed any act in furtherance of the alleged common intention as such the accused doesn't possess the common intention to commit the alleged crime.

[56] *Krishnan Vs State* (2003) 7 SCC 56
[57] *Mrinal Das v. State of Tripura*, (2011) 9 SCC 479

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 Mr.Abhishek(A1) and Mr.Angad(A2) are not guilty for offence under Section.186 of the Rabat Penal Code, 1860.
2. That Mr.Abhisek(A1) is not guilty under Section 304 r/w 34 of the Rabat Penal Code, 1860.
3. That A2 and Mr.Dushyant(A3) are not guilty for abetting murder under section 107 and 304 read with 34 of the Rabat Penal Code, 1860.

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

Place: S/d_____

Date: (Counsel on behalf of the Prosecution)