

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT
COMPETITION – NORTH INDIA ROUNDS, 2016**

BEFORE THE COURT OF SESSIONS

AT MAVADA, JAGUTAR

S.C. No. 101 OF 2016

STATE OF JAGUTAR

(PROSECUTION)

v.

ABHISHEK & ORS.

(DEFENCE)

FOR OFFENCES CHARGED UNDER:

**SECTION 304 READ WITH SECTION 34, SECTION 186 AND SECTION 107 OF THE
RABAT PENAL CODE, 1860.**

UPON SUBMISSIONS TO THE HON'BLE SESSIONS JUDGE

MEMORANDUM ON BEHALF OF THE PROSECUTION

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LIST OF ABBREVIATIONS

&	And
Insp.	Inspector
MLA	Member of Legislative Assembly
V	Versus
r/w	Read with
u/s	Under section
ed/edn.	Edition
Para	Paragraph
Sec./s	Section
RPC	Rabat Penal Code
CrPC	Code of Criminal Procedure
REA	Rabat Evidence Act
SCC	Supreme Court Cases
AIR	All India Reporter
Cr/Cri LJ	Criminal Law Journal
SCR	Supreme Court Reporter
ILR	Indian Law Reports
YLR	Yearly Law Reporter
Supp	Supplementary
SC	Supreme Court
Cal	Calcutta High Court
All	Allahabad High Court

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION, 2016
NORTH INDIA ROUNDS

Lah	Lahore High Court
Mad.	Madras High Court
Raj	Rajasthan High Court
PC	Privy Council

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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 Sessions when the 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 Sessions, he shall-

- (a) commit the case to the Court of Sessions;*
- (b) subject to the provisions of this Code relating 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 Sessions.'*

STATEMENT OF FACTS

Abhishek and Angad were childhood friends, Dushyant was a local leader, and they all were members of Collective Rabat Party ('CPR'). Abhishek was President and Angad was office bearer in College Union. Abhishek, Angad and his friends were constantly involved in altercations with students belonging to rival parties, they arranged a protest against arrest of Kidhar Lapat, the leader of CPR, who was charged with Sedition; and in support of Ram a student of B.N. University, who was arrested after he protested against hanging of Safal Rugu (a terrorist), such demonstrations by them lead to closing of the College, they came into bad terms with other students for this. Tanya and Natasha were their friends; they complained that two boys teased them regularly. Abhishek found that boys were Dinesh and Peter, former onebeing the son of a local MLA from ruling party. The boys threatened Abhishek and Angad, of some harm, when once they tried to stop them. Same evening Insp. Chaudhary warned them to stop their political activities. They researched about Insp., legal provisions of Private Defence and Police action during riots, etc. They also visited Dushyant for advice, who on hearing the incident said "*iski ye himmaat, salley ko mar dalo, kam se kam hamare neta to khush honge*" and also said that the party would support them, come what may.

Incident Details: On April 7, 2016, while Abhishek, Angad along with Tanya and Natasha were standing on the bus stop, the said boys came and said something to girls, after which Angad and Abhishek started pelting stones at them, this created an affray, to stop this Insp. Chaudhary came and grabbed Abhishek, to which Angad assaulted him in order to prevent him from doing so, Abhishek escaped and picked up a metal rod and threw it on Insp. Chaudhary which hit him on his head, he fell instantly and hit his head on tree stump and died. Abhishek and Angad were charged for culpable homicide not amounting to murder. The Court of Sessions, after investigation framed charges against Abhishek, Angad and Dushyant

STATEMENT OF CHARGES

The accused have been charged under:

I. Mr. Abhishek Lepat

- (i) Section 304 of the RPC.
- (ii) Section 186 of the RPC.
- (iii) Section 353 of the RPC

II. Mr. Angad Lepat

- (i) Section 304 r/w Section 34 of the RPC.
- (ii) Section 107 of the RPC.
- (iii) Section 186 of the RPC.
- (iv) Section 353 of the RPC.

III. Mr. Dushyant Lipo

- (i) Section 107 of the RPC.

SUMMARY OF ARGUMENTS**ISSUE 1****WHETHER ABHISHEK IS GUILTY OF CULPABLE HOMICIDE?**

It is humbly submitted before this Hon'ble Court that the accused, Abhishek Lepat is guilty of committing culpable homicide not amounting to murder under Sec. 304 Part I, as he had requisite intention to cause bodily injury as is likely to cause death in normal circumstances. The accused hit the deceased, Insp. Amit Chaudhary on his head with a metal rod, which in normal circumstances is sufficient to cause intracranial hemorrhage and thus death. Moreover the actions of the accused cannot be said to be protected under private defence as there was clear indication of pre-mediation.

ISSUE 2**WHETHER ANGAD SHARED COMMON INTENTION AND IS GUILTY OF
CULPABLE HOMICIDE?**

It is humbly submitted before this Hon'ble Court that the co-accused, Angad Lepat shared the common intention with the accused, Abhishek to cause death of Insp. Amit Chaudhary and thus is guilty of culpable homicide. Angad had requisite *mens rea*, as they planned in advance that they would cause harm to the deceased and will take the defence of Private Defence. They did an act in furtherance of that common intention; *actus reus* was completed when Angad obstructed the deceased from performing his duty and giving Abhishek the necessary escape to move forward with the act. Hence, the present case is a case of culpable homicide.

ISSUE 3**WHETHER ANGAD AND DUSHYANT ARE GUILTY OF ABETMENT?**

It is humbly submitted before this Hon'ble Court that the Angad and Dushyant abetted Abhishek. Angad did the same by instigation when he said that the deceased was taking out his revolver and was going to kill Abhishek. and intentional aiding was completed when he obstructed Insp. Chaudhary. Dushyant did so by instigation when Abhishek and Angad went to meet him and asked them to kill Insp. Chaudhary, though in a *fit of rage*, but his subsequent act followed the same lines, which shows that he always meant what he said. This statement gave them impetus to carry on the plan.

ISSUE 4

It is humbly submitted before the Hon'ble Court that the accused Abhishek and Angad are guilty under section 186 of the RPC, 1860 as he obstructed the deceased Insp. Chaudhary while he was discharging his public duty as conferred by the Police Act, 1861. Inspector Chaudhary was attacked by Angad and Abhishek while he was trying to stop them from pelting stones in a public place. He was not only obstructed but was also assaulted by Abhishek along with Angad which also makes them guilty under Section 353 of the RPC, 1861 and therefore, we request the Court to consider the charges under section 353 of the RPC, 1860.

ARGUMENTS ADVANCED**ISSUE 1: WHETHER ABHISHEK IS GUILTY OF CULPABLE HOMICIDE?**

The counsel for the prosecution humbly contends that Abhishek Lepat (hereinafter referred to as the 'accused') is guilty of offence under Sec. 304 of the *Rabat Penal Code, 1860* (hereinafter referred to as 'RPC') for causing death of Insp. Chaudhary (hereinafter referred as deceased) on the grounds that his act falls under Sec. 299 of the RPC [1.1], that he was not entitled to right of private defence u/s 100 of RPC [1.2] and exceeded the right u/s 99 [1.3].

[1.1] THE ACT OF THE ACCUSED FALLS UNDER SECTION 299 OF THE RPC.

The counsel humbly submits that the accused must be held liable under Part-I of Sec. 304 of the RPC, for *causing bodily injury as is likely to cause death*. It means that though the accused cannot be said to have *intended to cause death* yet he can be said to have the intention of causing such head injury (subjective test), and such injury is likely to cause death (objective test).

A. Intention Was To Cause Injury On Head Or Any Fatal Injury.

As nobody can enter into the mind of the accused, the intention is gathered from the acts of the accused and various surrounding circumstances.¹ The circumstances that help in corroborating the establishment of the guilty intention are as following: (a) nature of the weapon used and the amount of force employed in causing injury (manner of attack)²; (b) chance of pre-mediation³; (c) whether there was any prior enmity or whether the deceased

¹ *State of Haryana v Pala* 1996 SCALE (2) 179.

² *State of Gujarat v Ramanlal Chimanlal Khatri* 1969 Cri LJ 810.

³ *Pulicherla Nagaraju @ Nagaraja Reddy v State of Andhra Pradesh* (2006) 11 SCC 444.

was a stranger⁴; (d) part of the body chosen (vital or not vital)⁵; (e) The demeanor of the accused before and after the commission of the act⁶; (f) whether it was in the heat of passion; (g) whether the accused dealt a single blow or several blows.

In the backdrop of the above, the counsel for the prosecution would like to bring following facts in the notice of the court:

- (i) It was the agenda of their party 'to kill policemen'. (This shows motive).
- (ii) The accused in his telephonic conversation with Dushyant (hereinafter 'co-accused-2') has remarked that the very reason for him to kill the deceased was because co-accused-2 has told him on his meeting on 30th March "*maar dalo saaley ko*". He further said that he killed him because he expected protection from the party.⁷ On pursuance of such incitement, both the accused and co-accused-1, perused the provisions regarding self-defence, so that they could kill the deceased under the pretext of it. (this shows pre-mediation)
- (iii) It is pertinent to mention here that on 7th April they were expecting confrontation from the deceased after he had given them warning on 30th March.⁸ (this shows prior enmity)
- (iv) The auto garage worker (hereinafter 'PW-6') in his statement said that before hitting the rod on the deceased's head, the accused first hit the rod on the ground.⁹ This was to test the strength of the rod as to whether it is sufficient to knock the deceased down. (This shows manner and nature of weapon used).

⁴ *ibid.*

⁵ *Singapagu Anjaiah v State of Andhra Pradesh* (2010) 9 SCC 799.

⁶ *Sher Muhammad v State* (2004) YLR 1096.

⁷ Exhibit 5, Conversation 2, Moot Proposition.

⁸ Annexure 6, Point X, Moot Proposition.

⁹ Annexure 5, Statement 6, Moot Proposition.

- (v) The accused 'aimed' his shot on the head (a vital organ).
- (vi) The accused and Angad (hereinafter 'co-accused-1') ran away from the crime scene.

This shows that they were aware of their culpability. (demeanor of accused after commission of the act)

From the above facts, it is humbly submits that though the exact course of action was not pre-mediated by the accused, yet the accused had in mind the intention of killing the deceased, *whenever they got a chance*. However they cannot be charged under murder due to practical difficulties, as the nature of assault (only a single blow and that too with a non-deadly weapon) was not that culpable and the assaults took place in heat of the moment. However, it can safely be concluded that they atleast had formed the intention of causing to the deceased a fatal injury.

B. Head Injury Is Likely To Cause Death

Whenever it is established that the intention was not to cause death but was to cause that bodily injury, the court proceeds further to see the nature of injury, so as to determine whether the injury was such as *not likely to cause death* (grievous or simple hurt), *likely to cause death* (culpable homicide) or it was *sufficient in ordinary course of nature* to cause death (Murder). The only difference amongst the three is the *degree of probability* of death.¹⁰ This is more or less an objective inquiry.¹¹

¹⁰ Justice KT Thomas and M A Rashid, *Ratanlal & Dhirajlal The Indian Penal Code* (32nd, Lexis Nexis, 2010) p 1269.

¹¹ *Virsa Singh v State of Punjab* 1958 SCR 1495.

When the head is attacked by a blunt object death, though death is not a probable consequence in sufficient course of nature, yet it would fall within the category of a bodily injury of which death is *likely* a consequence.¹²

[1.2] ACCUSED CANNOT AVAIL RIGHT TO UNDER PRIVATE DEFENCE UNDER SEC 100.

A. No Reasonable Apprehension Of Death Or Grievous Hurt

For the application of sec.100, there must be an apprehension of death or grievous hurt and such apprehension must be based on reasonable grounds.

Firstly, there was no apprehension of death. There might have been apprehension of some possibility of minute bodily injury but certainly not of death or grievous hurt. *Secondly*, even if based on the *subjective point of the accused*¹³ it is contended that death or grievous hurt was apprehended, the counsel humbly submits that such apprehension was not based on reasonable grounds. The apprehension of death must be based on reasonable grounds, i.e., it must be either real or apparent¹⁴, but not illusory and imaginary.¹⁵

- (i) It is to be noticed from the Exhibit-1, that the holster that has been recovered is still unbuttoned. It is now unexplainable as to why the deceased was unable able to take out the gun or even unbutton the holster. Even if the defence story as narrated by the defence witnesses is to be believed that it was the co-accused-1 who prevented him

¹² *Jagrup Singh v State of Haryana* (1981) 3 SCC 616; *Behari v State* AIR 1953 All 203; *Ankush Shivaji Gaikwad v State Of Maharashtra* (2013) 6 SCC 770.

¹³ *Wassan Singh v State of Punjab* 1984 CriLJ 889.

¹⁴ Justice KT Thomas and M A Rashid, *Ratanlal & Dhirajlal The Indian Penal Code* (32nd, Lexis Nexis, 2010) p 202.

¹⁵ *ibid.*

from taking out the gun, it casts serious doubt because as disclosed by the post-mortem report, the deceased was a huge, colossal man and was quite fit. How could he be impeded by the co-accused-1 in such a way that he was unable to even unbutton the holster, leave alone the idea of taking out his gun? This shows that the deceased had no intention whatsoever to take out the gun and neither had he attempted to do so.

- (ii) The deceased had also said 'I will teach you a lesson you *will never* forget'. This clearly shows that he did not intend to cause death of the accused at that point of time, as he expected him to remain alive in future. The accused therefore should not have any reason to apprehend instant death.
- (iii) The incident took place in the evening when there was substantial public on the road. In the case of *State of Karnataka v Jinappa Payyappa Kudachi*¹⁶, Supreme Court held that since it was a public place (a bus in this case), the reasons for having a reasonable apprehension and that too of death, would be reduced in all the more probability because a person would rarely attempt to kill in a public place.

B. Limitation Of Section 99 Applies

Right to private defence is only available against an offence and not against any lawful act.¹⁷

Therefore Sec. 99 says that Right to Private Defence is not available against a public servant.

Sec. 99 mentions the circumstances in which right to private defence is not available against a public servant. These are as follows:

- 1) *Act is not causing reasonable apprehension of death or grievous hurt.*
- 2) *Act must be done in good faith and under the colour of his office (though it is not strictly justifiable by law).*
- 3) *The accused must know or must have a reason to believe the person is a public servant.*¹⁸

¹⁶ *S P Chengalvaraya Naidu v Jagannath* (1994) Supp 1 SCC 1.

¹⁷ *Ram Ratan v. State of Bihar* 1965 SCR (1) 293

- *Firstly*, it has been proved in *point A* that there was no reasonable apprehension of death or grievous hurt.
- *Secondly*, the deceased was acting in good faith as he was doing what he was duty bound to do. The deceased being a police officer is *always on duty*¹⁹, and in such capacity had a statutory duty to *prevent* the commission of offences and public nuisances from happening²⁰, when the accused and the co-accused-1 had started to create a ruckus in public which could have resulted in public nuisance. Even if the version of the defence that he slapped the accused from behind, is accepted, he can be said to act ‘not strictly justifiable by law’²¹, but in no chance, a thing which is ‘patently illegal’ or *ultra vires* his authority.²²
- *Lastly*, there is clear evidence that the accused knew that the deceased was a public servant as both the accused have said in their statements that they had researched about him, and it was also evident from the perusal of their search history, as mentioned in the final report.(As per Section 173, CrPC, 1973)

[1.3] THE ACCUSED EXCEEDED HIS RIGHT TO PRIVATE DEFENCE.

Assuming but not accepting the fact that the accused had the right of private defence, (irrespective of the fact that the deceased was a public servant covered under section 99) it is a clear case in which he exceeded it because as seen in argument 1.2 above, though there was apprehension of some minute injury, but, from no stretch of imagination the apprehension was of such an injury which would give him the right of private defence under Section 100,

¹⁸ The Rabat Penal Code 1860, s 99 Expl 1.

¹⁹ Rabat Police Act 1861, s 22.

²⁰ Rabat Police Act 1861, s 23.

²¹ *Kesho Ram v Delhi Administration* AIR 1974 SC 1158

²² *Emperor v Param Sukh* AIR 1926 All 147.

which would empower him to cause death. In *Yogendra Morarji v State of Gujarat*²³, the accused was in a closed station wagon when he was surrounded by the deceased's party. There was a reasonable apprehension that he would be attacked because some amount was due from the accused. They started pelting stones. However, the court came to the conclusion that no reasonable apprehension of death because the deceased were armed with only *lathis* and the accused was in a closed wagon. It held that such an attack may lead to reasonable apprehension of some physical injury but not death. Hence, he was convicted under Section 304. Thus, the counsel for prosecution humbly submits that this case also falls under Exception 2 of Section 300, whereby the accused exceeded his right to private defence and is therefore liable for Culpable Homicide not amounting to murder.

ISSUE 2: WHETHER ANGAD SHARED COMMON INTENTION AND IS GUILTY OF CULPABLE HOMICIDE?

It is humbly contended before the Hon'ble Court that 'co-accused 1' shared the common intention u/s 34 of the RPC and hence liability can be fastened on him in regards of the offence of culpable homicide under Sec. 304 of the RPC.

Sec. 34 of the IPC talks about Common Intention. It does not create a substantive offence and is more of rule of evidence. To establish charge under this section, the prosecution must prove following elements, beyond reasonable doubt.²⁴

- *There was common intention in sense of a prearranged plan;*
- *The person sought to be so held liable had participated in some manner in the act constituting the offence.*

²³*Yogendra Morarji v State of Gujarat* (1980) 2 SCC 218.

²⁴*Maharashtra State Electricity Distribution Company v Datar Switchgear Ltd* (2010) 10 SCC 479 {para 34};

Hamlet v State of Kerala (2003) 10 SCC 108 {para 17}.

It is humbly contended that the co-accused 1 had prior meeting of mind of a prearranged plan or common intention [2.1], there was participation in the act [2.2].

[2.1] Common intention had been formed before the act.

Common intention, whether is formed or not, is a question of fact to be determined by fact and circumstances of the case and no test in abstract can be laid.²⁵ Common Intention can either be *premeditated* or may be formed at the *spur of the moment*.²⁶

In the present case it is humbly contended by the prosecution before the Hon'ble Court that the accused shared a common intention which was *premeditated* in nature i.e. it was already present before the transaction took place. The counsel for the prosecution relies upon the following facts:

- (i) The accused belonged to the Collective Party of Rabat which finds its ideology against the police officers, which was evident from two separate incidents, one when Kidhar Lepat the leader of CPR was charged with Sedition for inciting party members *to kill policemen* rather than commit suicide for the cause²⁷; the second when the co-accused-2, the local leader for the party had told them to kill the deceased, if need be and that same would make leaders happy and also told that the party would support and protect come what may.²⁸ [The argument that the co-accused-2 said this in fit of rage or whether *he* intended it or not is not relevant for the present issue. The thing relevant is what the accused and the co-accused 1 *construed* from co-accused-2's words and conduct. It is clear from the call records of the accused with the co-accused-1 that both of them had construed from co-accused-2's words and conduct which gave them impetus to move

²⁵ *Goudappa v State of Karnataka* (2013) 3 SCC 675 {para 22-25}.

²⁶ *Rajesh Govind Jagesha v State of Maharashtra* (1999) 8 SCC 428 {para 7}.

²⁷ Annexure 6, para iii, Moot Proposition.

²⁸ Annexure 6, para viii, Moot Proposition.

forward. It is clear from conversation 1 as on 7th April that co-accused-1 had construed this conception and from conversation 3 as on the same date that the accused himself shared the same.]

- (ii) The most important fact which suggests pre-mediation and acted on what they constructed from earlier talks is that they both sat together (that too on the same evening on which they met co-accused-2), and browsed about various provisions which related to self-defence and about police action in riots.

The prosecution humbly submits, on the basis of above facts that, all of them if taken as a circumstantial chain of events, it shows beyond reasonable doubt that though the accused and the co-accused-1 had not planned the *modus* of killing the deceased and had not formed a fixed and detailed plan regarding it, yet it can be inferred that they had formed a common intention in the form of pre-meditation that they would kill him, *as and when the chance occurs* and that too under the *pretext of private defence*.

[2.2] There Was The Participation In The Act.

For the application of this section it is imperative to prove that the accused participated in the act and this participation in the act may be in some way or the other, but it needs to be there.²⁹

This participation in the act may be either *overt* or *covert*, but it needs to be there.³⁰

It is humbly submitted that the co-accused had *overtly* participated in the act. Following facts describe his overt act:

- i) At the time of transaction, when the deceased was apprehending the accused for causing ruckus in public, as it was his duty as a police officer, co-accused-1 intervened and inhibited the deceased from doing so.

²⁹ *Parasa Raja Manikyala Rao v State of Andhra Pradesh* (2003) 12 SCC 306 {para 11}.

³⁰ *Tukaram Ganpat Pandare v State of Maharashtra* (1974) 4 SCC 544; *Barendra Kumar Ghosh v The King Emperor* AIR 1925 PC 1.

- ii) As stated by PW-6, he also started struggling with the deceased, so that Mr. Abhishek could manage to disentangle himself from Mr. Chaudhary.³¹ This effort of Angad was successful and after helping the accused who fled, co-accused-1 also fled. Now nobody of them being in the vicinity of the deceased, Abhishek threw a metal rod on him.

One prerequisite is that there must not be a long gap in formation of the intention and the actual act.³² It is contended that the case in hand also fulfills this requirement as after the formation of intention on 30th March 2015 the accused went on to plan the way to save themselves and once the same was done they went on and committed the act on the very first confrontation with the deceased.

Thus, it is contended that the act of co-accused-1 was in furtherance of the plan hatched by them and he shared the common intention to commit the offence.

ISSUE 3: WHETHER ANGAD AND DUSHYANT ARE GUILTY OF ABETMENT?

To 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.³³ As per section 107 of IPC, abetment can be done three ways viz. by instigation, by conspiracy and by intentional aiding. The counsel humbly contends that co-accused 1 and 2 are guilty.

³¹ Annexure 6, Statement 6, Moot Proposition.

³² *Ramchander v State of Rajasthan* 1970 Cri LJ 653 (Raj).

³³ Justice KT Thomas and MA Rashid, *Ratanlal and Dheerajlal Indian Penal Code* (34, Lexis Nexis, 2010) p 211.

ANGAD:

The counsel humbly submits that co-accused 1 abetted the accused to kill the deceased by way of instigation [3.1] and intentional aiding [3.2].

[3.1] ANGAD INSTIGATED ABHISHEK TO KILL INSP. CHAUDHARY.

Instigation is to goad, urge forward, provoke, incite or encourage someone to do “an act”.³⁴

There are three ingredients of instigation: (a) There must be an *act of instigation* [A]; (b)

There should be an *intention to instigate* [B]; (c) Such act of instigation must be *capable of instigating* to do what the accused did [C].

A. There Must Be An Act Of Instigation.

It is not necessary in law to prove actual words in order to establish instigation.³⁵ A person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means or language direct or indirect, whether it takes the form of express solicitation or of hints, actions, insinuation or encouragement.³⁶

The counsel humbly argues that the words of the co-accused “*he is going to shoot you*” were the act of instigation. As has been already made clear, the accused and the co-accused had a pre-conceived concept that they will kill the deceased, in garb of private defence, whenever they will get opportunity. These words were in nature of a *hint* given by the co-accused-1 to the accused that it was the correct time to give effect to their plan and lodge a lethal attack on the deceased.

³⁴ *ibid.*

³⁵ *Prem Narain v State* AIR 1957 All 177.

³⁶ JWC Turner, *Russell on Crime* (12,London: Stevens & Sons,1964) p 199

B. Intention To Instigate.

The fact that there was a common intention to attack the deceased whenever chance occurs has already been mentioned in previous arguments.

C. Capability Of The Act To Instigate.

The act of instigation must be *capable of instigating* to do what the accused did. Whether the act of instigation was capable of instigating can be determined in two ways: (a) Sometimes the words/acts/solicitations used are clearly suggestive of the consequence. (b) But, it is not always that the words/acts/solicitation used are clearly suggestive of the consequence³⁷. Yet when seen in light of the ‘supervening circumstances’, such words etc. are found capable of instigating.

In this case, though the words spoken are not in themselves suggestive of instigation to kill a person, yet the effect of the words should not be seen in isolation³⁸, but in light to supervening circumstances. There can be two assumptions:

- i) If it is assumed that the words were in the nature of a *hint*, then their capability to instigate becomes clear in light of the pre-conceived plan.
- ii) Even if the defence argues that there was no pre-conceived plan, such words would amount to instigation. Though the accused, who was entangled with the deceased, may not have a clear vision of the acts of the deceased, yet the co-accused-1 who was standing away had. He knew that the deceased was only pointing out to his gun. In such a scenario shouting that “*he is going to shoot you*” was unwarranted.

³⁷ Justice KT Thomas and MA Rashid, *Ratanlal and Dheerajlal Indian Penal Code* (34, Lexis Nexis, 2010) p 211.

³⁸ *Brijlal v Prem Chand* AIR 1989 SC 1661.

Hence it is humbly submitted by the counsel for the prosecution that the accused shouted such words just because a) he wanted to *foment* the accused, either to make a lethal assault on the deceased in self-defence, or b) to give him *hint* to act in furtherance of their pre-conceived plan which is to kill the deceased whenever they get a chance in garb of private defence.

[3.2] ANGAD INTENTIONALLY AIDED ABHISHEK TO KILL INSP. CHAUDHARY.

A person abets by aiding, when by any act done either prior to, or at the time of the commission of an act, he intends to *facilitate* and does in fact facilitate the commission thereof. Two ingredients are necessary to attract the third clause of section of IPC: a) There must be facilitation [A] b) there must be intention to facilitate [B].

A. There Must Be Facilitation.

Facilitating means making the commission of the offence easier.³⁹ The deceased, being a Policeman went ahead to stop both of them from doing so and he used some force, which was necessary in order to stop them. Both of them resented the restraint and while doing so they used force against the deceased. The accused somehow managed to escape from his clutches and moved ahead to seek something to attack the deceased. While co-accused-1 on the other hand held the policeman and prevented him from taking any action, thereby facilitating the accused to attack the deceased. This clearly substantiates that co-accused-1 aided the accused in the whole process.

B. There Must Be Intention To Facilitate.

Doing something for the offender is not abetment. Doing something with the knowledge so as to facilitate him to commit the crime would constitute abetment. *Mens Rea* is a prerequisite

³⁹'Facilitate', Black's Law Dictionary (10th ed 2014).

for commission of offence of abetment and intentionally aiding someone, despite knowing the consequences of such aid, would incur the liability under clause thirdly of section 107 of IPC.⁴⁰ The fact that both the accused and the co-accused intended to kill the deceased has been substantiated in previous arguments.

DUSHYANT:

The ingredients of abetments as explained above mentioned doesn't require a person to be present at the crime scene with the perpetrators. The counsel for prosecution humbly submits that co-accused-1 can be held liable for abetment by instigation under Section 107 Firstly of the RPC. In present case, when accused and the co-accused-1 had gone to co-accused-2 for seeking his advice as to what they should do regarding the threat given by the deceased and the two bikers, Dinesh and Peter (hereinafter 'complainant' and 'PW-5' respectively), one of whom was the son of an MLA of the ruling party. Co-accused-2, after hearing about the deceased, a close aid of ruling party became furious and used some abusive words, which clearly shows his anger and frustration against the deceased. Co-accused-2 said "*Uski ye himmat, salley ko maar daalo, kam se kam hamare neta toh khush rahenge*", this statement clearly shows that co-accused -2 wanted to have the deceased killed and hence advised accused and co-accused-1 to kill him, in order to take vengeance and appease their political leaders. His words are clear indication of his *mens rea* and are enough to instigate someone who has come to you to seek advice. Further when accused and the co-accused were leaving he encouraged the accused and said that "*You know what to do and how to defend yourself*" pointing out to his previous statement indirectly. All these taken in cumulative shows that co-accused-2 instigated both of them to kill the deceased.

⁴⁰*Ram v State of UP AIR 1975 SC 175.*

4. WHETHER ANGAD AND ABHISHEK ARE LIABLE UNDER SECTION 186 AND 353 OF RPC.

The prosecution humbly pleads before this Hon'ble court to invoke its power under Section 216 of the CrPC and alter the charges imposed on the accused and the co-accused by addition of charges under Section 353 to the charges under Section 186 to which they were charge-sheeted.

The contents of both the offences overlap. Section 186 being an offence in contempt of lawful authority⁴¹ comes into picture when a voluntary obstruction is caused [4.1] on a public servant [4.2] while he is discharging his public duty [4.3]. The difference is that Section 353 is a graver offence in which the intention may or may not be of obstructing a police officer, but it is primarily an offence against human body⁴² in which the intention is to lodge an assault or a criminal force on that public servant who is performing such public function. [4.4].

[4.1] THERE WAS A VOLUNTARY OBSTRUCTION BY THE CO-ACCUSED.

The term voluntary in the section indicates that the offence must be of some overt act of obstruction.⁴³ The obstruction denotes some overt act in nature of violence or show of violence.⁴⁴ In light of the present facts and circumstances, it is evident that co-accused voluntarily obstructed the deceased from apprehending the accused, which helped the latter to use criminal force on the deceased.

⁴¹ *Kalyan Sundaram v State of Tamil Nadu* 1994 CrLJ 2487.

⁴² *ibid.*

⁴³ *Jaswant Singh v Emperor* AIR 1925 Lah 139.

⁴⁴ *Phudki vs State* AIR 1958 All 104.

[4.2] THE DECEASED WAS A PUBLIC SERVANT

In light of section 21 of Indian Penal Code defines various categories of persons discharging different function as public servant. A police officer is covered by virtue of clause *Eightly* under the category of public servant.

[4.3] THE DECEASED WAS DISCHARGING HIS PUBLIC FUNCTIONS.

The deceased was on duty as police officers by the virtue of section 22 of the Police Act, 1861 which states that police officers are always on duty. Also according to Section 23 of the Indian Police Act, 1861, it is the duty of the police officer to *prevent* the commission of offences and public nuisances. Section 34 makes its lawful for any police officer to *take into custody, without a warrant, any person, who is throwing stones into the streets.*⁴⁵

From the fact and circumstances, it is clear that the deceased was acting legally and within the bounds of his authority, as per the provisions of the Police Act, in apprehending the accused who were creating public nuisance and affray. In no manner he went beyond his authority or did anything which was illegal, suspect or immoral.

[4.4] THERE WAS USE OF CRIMINAL FORCE BY THE ACCUSED AND THE CO-ACCUSED.

Both the accused had used physical force to impede the police officer. While the deceased attempted to apprehend the accused while he was pelting stones and a creating ruckus, the co-accused stopped him from doing so. The FIR and statement of the DW-6 confirm the fact that both have attacked the deceased while he was trying to control the ruckus which was caused on the road by none other than the accused themselves.

⁴⁵ Rabat Police Act 1861, s 34.

PRAYER

Wherefore, in the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. **Convict** Mr. Abhishek Lepat for the offence of Culpable Homicide not amounting to murder under Section 304 of the Rabat Penal Code, 1860 and Obstructing Public Servant in discharge of Public function under Section 186 of the Rabat Penal Code, 1860.
2. **Convict** Mr. Angad Lepat for the offence of Culpable Homicide not amounting to murder under Section 304 r/w Section 34 of the Rabat Penal Code; Abetment under Section 107 of the Rabat Penal Code, 1860 and Obstructing Public Servant in discharge of Public function under Section 186 of the Rabat Penal Code, 1860.
3. **Convict** Mr. Dushyant Lipo for the offence of Abetment under Section 107 of the Rabat Penal Code.

Pass any other order that this Hon'ble Court may deem fit, in interest of Justice, Equity and Good Conscience.

All of which is most humbly and respectfully submitted.

S/d _____

Counsel for the Prosecution