

**SURANA & SURANA NATIONAL TRIAL ADVOCACY MOOT COURT  
COMPETITION 2016 – NORTH ROUNDS**

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**IN THE COURT OF SESSIONS,**

**MAVADA, JAGUTAR, UNION OF RABAT**

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**S. C. No. 101 of 2016**

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**IN THE MATTER OF**

**STATE OF JAGUTAR**

**(Prosecution)**

*Versus*

**ABHISHEK, ANGAD & DUSHYANT**

**(Defence)**

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**FOR THE OFFENCES CHARGED UNDER**

**Section 107, 186 & 304 r/w section 34 of RABAT PENAL CODE, 1860**

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**SUBMISSION TO THE HON'BLE SESSIONS JUDGE**

**MEMORIAL ON BEHALF OF PROSECUTION**

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**LIST OF ABBREVIATIONS**

¶	Paragraph
¶¶	Paragraphs
A	Accused
AIR	All India Reporter
All	Allahabad High Court
RPC	Rabat Penal Code i.e. Indian Penal Code
Cal	Calcutta High Court
Cri LJ/ Cr LJ	Criminal Law Journal
Cr.P.C./ CrPC	Code of Criminal Procedure
Del	Delhi High Court
DW	Defence Witness
Ed.	Edition
Mad	Madras High Court
Bom	Bombay High Court
Ori	Orissa High Court
Raj	Rajasthan High Court
n.	Foot Note No.
PW	Prosecution Witness
p.	Page No.
r/w	Read With
SC	Supreme Court
Supp	Supplementary
SCC	Supreme Court Cases
SCR	Supreme Court Report
Sec./S./§	Section
U/s	Under Section
v.	Versus

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## STATEMENT OF JURISDICTION

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The Hon'ble Court has jurisdiction to try the instant matter pursuant to Section 177 read with Section 209 of the Code of Criminal Procedure, 1973.

<sup>1</sup>*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.

<sup>2</sup>*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 the 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.

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<sup>1</sup> Section 177, Code of Criminal Procedure 1973.

<sup>2</sup> Section 209, Code of Criminal Procedure 1973.

## STATEMENT OF FACTS

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### **BACKGROUND:**

- Abhishek & Angad are Post Graduate students of Political Science and Administration at Presidency College, Mavada. They are childhood friends. They belong to the same Lepat Community. Abhishek is the leader of the Union and Angad an office bearer.
- Dushyant is a local leader of CPR. The party is fighting against the government for the inclusion of their community in “OBC” list. The party leader and is booked for sedition for inciting the party to kill a few policemen rather than commit suicide for the cause.
- Tanya and Natasha are also members of the Union and are close to Abhishek and Angad as they all belonged to the same Community.

### **CAUSE OF ACTION:**

- Dinesh, is the son of a MLA of the ruling party. Dinesh & Peter were harassed and threatened by Abhishek & Angad for the reason that they used to visit tea stall. For this, they had complained to Inspector Chaudhary who is known to them.
- On April 7, 2016 as Dinesh & Peter stopped for a cup of tea, Abhishek & Angad pounced on them and started pelting stones on them.
- In the meanwhile, the Inspector, Amit Chaudhary tried to control the situation but Abhishek picked up a metal rod from a nearby garage and hit the inspector on the head. The inspector was taken to the Hospital & was declared ‘brought dead’.
- Abhishek was arrested along with his friend Angad and charged for the murder of the Inspector. Further, Dushyant was also arrested for abetment to the crime. After complying with the statutory requirements, the Court of Sessions framed charges against the accused.

## STATEMENT OF CHARGES

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### CHARGE 1:

Mr.Abhishek (hereinafter referred as '*Accused no.1*') has been charged under section 186 (Obstructing Public Servant in Discharge of Public Functions) and Section 304 (Punishment for Culpable Homicide not amounting to Murder) r/w Section 34 (Common Intention) of the Rabat Penal Code, 1860.

### CHARGE 2:

Mr.Angad (hereinafter referred as '*Accused no.2*') has been charged under Section 107 (Abetment of a Thing); Section 186 (Obstructing Public Servant in Discharge of Public Functions) and Section 304 (Punishment for Culpable Homicide not amounting to Murder) r/w Section 34 (Common Intention) of the Rabat Penal Code, 1860.

### CHARGE 3:

Mr.Dushyant (hereinafter referred as '*Accused no.3*') has been charged under Section 107 (Abetment of a Thing) and Section 304 (Punishment for Culpable Homicide not amounting to Murder) r/w Section 34 (Common Intention) of the Rabat Penal Code, 1860.

## **SUMMARY OF ARGUMENTS**

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### **ISSUE 1. THAT CHARGES MAY BE ALTERED FROM SECTION 304 TO SECTION 302 RABAT PENAL CODE, 1860.**

The prosecution humbly submits that prima facie the charges framed against the accused are subject to correction. Section 216 of the Code of Criminal Procedure, 1973 invests with the Court with a comprehensive power to remedy the defects in the framing or non-framing of the charge whether discovered at the inception of a trial or at any subsequent stage prior to judgment. Even if there is an omission to frame a proper charge at the commencement of the trial which omission is discovered subsequently, the same can be remedied by framing appropriate charge at any time before judgment is pronounced. The section provides that during the course of trial any charge can be modified or substituted and the Court can pass appropriate orders at any stage of the trial. Hence, the prosecution humbly requests the Hon'ble Court to alter the charge of Section 304, Rabat Penal Code framed against all the accused to a charge of Section 302, Rabat Penal Code.

### **ISSUE 2. THAT ACCUSED (ABHISHEK, ANGAD & DUSHYANT) SHOULD BE HELD GUILTY U/S 302 R/W SECTION 34, RABAT PENAL CODE, 1860.**

It is most humbly submitted before this Hon'ble Court that the accused should be held guilty under Section 302 r/w S.34 Rabat Penal Code, 1860 since all the essentials of murder are established. Abhishek intentionally chose to throw metal rod instead of stones on vital part of deceased. There are circumstances clearly showing the pre-meditation and thus no right to private defence was available with accused. Also, Abhishek committed the same on the aid and advice of Dushyant. Angad aided Abhishek in committing the offence. Therefore accused caused death of the deceased in pursuance of common object.

**ISSUE 3. THAT ACCUSED (ABHISHEK & ANGAD) SHOULD BE HELD GUILTY FOR OBSTRUCTING PUBLIC SERVANT IN DISCHARGE OF PUBLIC FUNCTIONS.**

The counsel humbly submits before this Hon'ble Court that the accused should be held guilty U/s 186 of the Rabat Penal Code, 1860 since accused voluntarily obstructed deceased Inspector Chaudhary in maintaining law & order which was his authorised legitimate function. When deceased arrived at the crime scene and was using reasonable force to prevent nuisance being created by both the accused, they both obstructed him perform his duty and even caused death of the Inspector Chaudhary. Further, in arguendo, a police officer is always on duty by virtue of s.22 of Police Act,1861.

**ISSUE 4. THAT ACCUSED (ANGAD & DUSHYANT) SHOULD BE HELD GUILTY FOR ABETMENT.**

It is most humbly submitted that accused should be held guilty U/s 107 of Rabat Penal Code, 1860 since Angad & Dushyant have abetted Abhishek to commit murder. Dushyant advised Abhishek to urge forward & inflict harm to deceased and thereby instigated accused no.1. Angad intentionally aided and proved to be accessory to the crime committed by accused no.1. It is further submitted that to establish offence of abetment, presence at the spot of crime is immaterial. Therefore, Dushyant though not present at the bus stand during the crime he only stimulated the offence.



## ARGUMENTS ADVANCED

*ISSUE 1. THAT CHARGES MAY BE ALTERED FROM SECTION 304 TO SECTION 302 RABAT PENAL CODE, 1860.*

(¶.1) It is most humbly prayed before this Hon'ble Court to alter the charge of Section 304 of Rabat Penal Code, 1860 against the accused to Section 302 of the Rabat Penal Code, 1860 since accused has committed murder; [1.1] this Hon'ble Court is competent to alter charges U/s 216 of the Code of Criminal Procedure, 1973 and [1.2] no prejudice is being created against accused.

1.1. THAT THIS HON'BLE COURT OF SESSIONS IS COMPETENT TO ALTER THE CHARGES.

(¶.2) Section 216 of the Code of Criminal Procedure invests with the Court a comprehensive power to remedy the defects in the framing or non-framing of the charge whether discovered at the inception of a trial or at any subsequent stage prior to judgment.<sup>3</sup> Even if there is an omission to frame a proper charge at the commencement of the trial which omission is discovered subsequently, the same can be remedied by framing appropriate charge at any time before judgment is pronounced.<sup>4</sup> The section provides that during the course of trial any charge can be modified or substituted and the Court can pass appropriate orders at any stage of the trial.<sup>5</sup>

(¶.3) Once the charge is framed it cannot be said that the same cannot be subjected to alteration. The same Court itself can, alter or add the charge in exercise of power under Section 216 of the Code of Criminal Procedure before the judgment is delivered.<sup>6</sup> It was established in the case of *Akbar v. State of Kerala*,<sup>7</sup> *if a petition is filed only to alter the charge and the charge is altered, it would not culminate the proceedings.*

<sup>3</sup> A.N. Mukherjee v. State, AIR 1969 All 489.

<sup>4</sup> Enumula Subbarao v. State, (1979) CriLJ 258 (AP).

<sup>5</sup> Munna v. State, (1996) CriLJ 65 (All); Rocky Benediek v. State of Sikkim, (2003) CriLJ 3309 (All).

<sup>6</sup> H.K. Raithatha v. State of Maharashtra, (2009) CriLJ 439 (Bom).

<sup>7</sup> *Akbar v. State of Kerala*, (2010) CriLJ 2555; See also *Bhaskar Industries Ltd. v. B.D & A. Ltd.*, 2001 (3) KLT 307 (SC); *Sreedharan v. State of Kerala*, 2005 (2) KLT 108.

(¶.4) The object of §.216 of Code of Criminal Procedure is to ensure a fair trial. A new charge can be added or existing charge can be altered if there is material before Court either in the complaint or in the evidence to justify such action.<sup>8</sup> In the instant matter, the evidence on record *prima facie* infers that accused has committed murder and should be charged U/s 302 since his act does not falls within any of the exception enlisted U/s 300 RPC. Further, this Hon'ble Court is competent to try for a charge under Section 302 of the Rabat Penal Code by virtue of Section 177 read with Section 209 of the Code of Criminal Procedure, 1973.

1.2 THAT ALTERATION OF CHARGES IS NOT CREATING ANY PREJUDICE AGAINST ACCUSED.

(¶.5) Ample power has been given to the court to alter or amend a charge provided that the accused has not to face a charge for new offence or is not prejudiced.<sup>9</sup> It is humbly submitted that there is no prejudice caused against the accused due to such an alteration in charge. Prejudice refers to a judgement or opinion favorable or unfavorable formed beforehand or other grounds than reason or justice or determination of any right.<sup>10</sup> Under Section 217 of the Code of Criminal Procedure, whenever a charge is altered, the prosecution as well as the defence shall be allowed to re-examine the witness. In the present case, no witness has been examined hence, there is no need for a re-trial. It is true that discretion has been given to the Court to direct a new trial after addition or alteration of charges but it does not mean that every such alteration or addition would lead to inevitable interference that the Court has ordered a re-trial. It is only in cases in which prejudice is caused to the accused that a re-trial is ordered. Prejudice is not being caused in the present case since the charges being altered are of similar nature and have the same ingredients hence there is no prejudice caused to the accused.

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<sup>8</sup> T.J. Edward v. CA.V. Immanuel, (2002) CriLJ 1670 (Ker); P.M. Patel v. State of Gujrat, (2001) CriLJ 1354 (Guj)..

<sup>9</sup> Kantilal Chandulal Mehta v. State of Maharashtra, AIR 1970 SC 359.

<sup>10</sup> III, JUSTICE C.K.THAKKER, JUDICIAL OFFICER'S LAW LEXICON, 3659 ( Ashoka Law House Delhi, 2008).

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*ISSUE 2. THAT ACCUSED (ABHISHEK, ANGAD & DUSHYANT) SHOULD BE HELD GUILTY FOR MURDER U/S  
302 R/W SECTION 34, RABAT PENAL CODE, 1860.*

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(¶.6) It is humbly contended that the accused should be held guilty for committing the offence of murder under Section 302 of the Rabat Penal Code since [2.1] *actus reus* & [2.2] *mens rea* to cause death is established; [2.3] accused has no right to private defence; and [2.4] all the accused had common intention U/s 34 RPC.

(¶.7) In order to bring a successful conviction U/s 302 RPC, it is pertinent to refer to Section 300 of the Rabat Penal Code, 1860 that elucidates the essentials of murder. It is humbly submitted that Abhishek, Angad and Dushyant are liable to be held guilty under section 300 r/w Section 34 as Abhishek's act of throwing the metal rod was done with the intention of causing death of the deceased in pursuance of common intention. The intention to kill has to be gathered from certain factors such as the nature of the weapon used and the vital part on which the injury was inflicted and the force with which the weapon was used. Once intention is proved, the offence is murder unless it falls with any of the exceptions of Section 300.<sup>11</sup> Where injuries are inflicted with the intention of killing a person and death ensues as a result of the injuries, it is a clear case of murder falling under Section 302 of the Rabat Penal Code.<sup>12</sup> The Prosecution humbly contends that both, the *actus reus* and the *mens rea* of the crime are established in the instant matter.

2.1. ACTUS REUS OF MURDER IS PROVEN.

(¶.8) *Actus reus* is any wrongful act.<sup>13</sup> Thus, in a case of murder, *actus reus* would be the physical conduct of the accused that causes death of the victim. In the instant case, the *actus reus* is established by way of (2.1.1) Circumstantial evidence & (2.2.2) Medical Examination.

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<sup>11</sup> Rajwant Singh v. State of Kerala, AIR 1966 SC 1874; State of Rajasthan v. Arjun Singh, (2011) 9 SCC 115.

<sup>12</sup> Badri v. State, AIR 1953 All 189.

<sup>13</sup> AIYAR, P RAMANATHA, THE LAW LEXICON, 49 (2ND ED, Lexis Nexis Nagpur, 2006)

### **2.1.1. Circumstantial Evidence**

(¶.9) Bearing in mind that it is not for the prosecution to meet any and every hypothesis suggested by the accused, howsoever extravagant and fanciful it might be, guilt can be proved by circumstantial evidence after justification of incriminate facts and circumstances.<sup>14</sup> It is humbly submitted before this Hon'ble Court that the circumstantial evidence in the instant matter shows that within all human probability, the act must have been done by the accused. Series of events *Firstly* threatening & warnings to Dinesh & Peter by accused if seen near college; *secondly* advice by accused no.3 to Abhishek to kill deceased; *thirdly* search regarding various provisions regarding police action & legal protection under self defence (Refer to Exhibit 4 already on court file); and *fourthly* the act at the spot of crime clearly infers that there was a premeditated plan to cause death of deceased.

(¶.10) On 7th April, 2016 accused 1 & 2 were at the bus stop with their friends Tanya & Natasha. At the same time, Dinesh along with his friend Peter were at a tea stall right next to the bus stop. Accused 1, being a member of a different political party did not like Dinesh & accused 1 & 2 started pelting stones at Dinesh & Peter as they were leaving. There was a state of panic at the bus stop. To handle the situation, Inspector Amit Chaudhary decided to intervene. In a premeditated manner & to use plea of self defence, Angad his partner in crime shouted that the Inspector is taking out his gun, but it is evident from the picture of holster (Exhibit 1) that it was not even open. It is evident to construe that the Inspector had enough time to take out his gun before Abhishek attacked him with a metal rod, but the same never happened because the Inspector did not have such an intention. Further, the phone record (Exhibit 4) suggests that Abhishek and Angad planned the same on aid and advise of Dushyant who had asked them to kill the Inspector.

### **2.1.2. Medical Examination.**

(¶.11) It is humbly submitted that Post Mortem Report clearly opines that the death of the deceased has been caused by intracranial haemorrhage which was triggered by the blow on the head since the

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<sup>14</sup> State of U.P. v. Ashok Kumar Srivastava, AIR 1992 SC 840; V.C. Shukla and Ors. v. State (Delhi Administration), AIR 1980 SC 1382 ; Bodh Raj @ Bodha and Ors. v. State of Jammu & Kashmir, AIR 2002 SC 3164. ;

head was severely damaged and the skull was cracked. There were no other fresh injury marks on the body. Further, the Forensic Report clearly states that the injury on the head was caused as a result of blunt force trauma that is an object travelling at a high speed causes damage to the skull. Thus it is would not be incorrect to deduce that the injury inflicted on the deceased was due to the metal rod that was thrown by accused 1. Accused no.1 himself has admitted that the act of throwing a blunt object was done by him (Refer to statements recoded U/s 161 CrPC, 1973).

(¶.12) It is further submitted that it is duly acknowledged that the cause of death was not just internal bleeding but internal bleeding coupled with Hypovolemia or Hyplovolemic shock but even still the accused can be held liable for committing the offence of murder due to the principle of causation. Hypovolemia means decrease in volume of the blood had been caused due to the internal bleeding which was caused due to the blow on the head by the act of throwing a metal rod by accused 1. Since the supervening causes can be attributed to the injuries caused, the persons inflicting the injuries are liable for causing the death even if the death was not the direct result of the injuries.<sup>15</sup>

#### 2.2. MENS REA FOR MURDER IS ESTABLISHED.

(¶.13) Mens rea is considered as guilty intention<sup>16</sup>, which is proved or inferred from the acts of the accused.<sup>17</sup> It is submitted that (2.2.1) there was intention to cause injury. & (2.2.2) there was a clear-cut motive of the accused.

#### 2.2.1. There Was An Intention To Cause Injury.

(¶.14) Where a person causes an injury on the vital part of the body, the intention to kill can be attributed from that.<sup>18</sup> Causing a serious injury on a vital part of the body of the deceased must

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<sup>15</sup> Rewaram v. State of Madhya Pradesh, (1978) CriLJ 858 (MP); Virsa Singh v. State of Punjab, AIR 1958 SC 465; Kishore Singh v. State of Madhya Pradesh, AIR 1977 SC 2267.

<sup>16</sup> Commissioner of Income Tax v. Patranu Dass Raja Ram Beri, AIR 1982 P&H 1.

<sup>17</sup> State of Maharashtra v. Meyer Hans George, AIR 1965 SC 722.

<sup>18</sup> Chahat Khan v. State of Haryana, (1973) CriLJ 36 (SC); Bhaskar Pandit v. State of Maharashtra, 1984 (2) BomCR 769; Raju v. State of Kerala, AIR 1994 Ker 179.

necessarily lead to the inference that the accused intended to cause death or bodily injury sufficient to cause death of the victim, and it answers to section 300 and is murder.<sup>19</sup> Given that the accused had inflicted injury with metal rod to the deceased at his vital part though he has choice to hit him with stones at other parts of body, it is evident that he had the intention to cause injury. Further, the act of the accused was totally premeditated as is evident from the Internet browsing history of accused 1 personal computer regarding various provisions regarding police action & legal protection under self defence (already on the court file as Exhibit 4) and further from extract of telephonic conversation after the crime (already on court file as Exhibit 5). They killed the Inspector because of the backing given by Dushyant. When the doer of an act knows that his act would result in death of a person, he should be deemed to have intent to cause death.<sup>20</sup> This clause applies when the culprit either knew or must have known that death would be a result of his or their act.<sup>21</sup> The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion.<sup>22</sup>

### **2.2.2. That accused had motive to kill the Deceased.**

(¶.15) Section 8 of the Rabat Evidence Act, 1872 stipulates that any fact is relevant which shows or constitutes motive or preparation for any fact in issue or relevant fact. It is further pertinent to note that if there is motive in doing an act, then the adequacy of that motive is not in all cases necessary. Heinous offences have been committed for very slight motive.<sup>23</sup> In furtherance of the above made

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<sup>19</sup> Md. Idrish v. State, (2004) CriLJ 1724 (Raj); Md. Sharif & Anr. v. Rex, AIR 1950 All 380; Badri v. State of U.P., AIR 1953 All 189; Dibia v. State of U.P., AIR 1953 All 373; State of Maharashtra v. Bhairu Sattu Berad, AIR 1956 Bom 609.

<sup>20</sup> R.A. NELSON, INDIAN PENAL CODE, 1009 (7<sup>th</sup> Ed Lexis Nexis Gurgaon 1983)

<sup>21</sup> Rahman Samail v. Emperor, AIR 1939 Lah 245.

<sup>22</sup> Naseem @ Bhatey v. State, (2000) CriLJ 3043 (All)

<sup>23</sup> Son Lal v. State of Uttar Pradesh, AIR 1978 SC 1142; Chhotka v. State of W.B., AIR 1958 Cal 482.

statements it is humbly submitted that all the accused had the intention to kill Inspector Amit Chaudhary because he was close to the ruling party which opposed the political ideology of the accused. Accused 1 also searched about the inspector over the internet which is evident from his internet browsing history (Exhibit 4). The accused also search about private defence so as to save himself after the commission of the crime. Accused 3 gave accused 1 & 2 an assurance that the party will support them in all their actions which is enough to show that even accused 3 had a motive to kill Inspector Amit Chaudhary.

### 2.3. THE ACCUSED HAD NO RIGHT TO PRIVATE DEFENCE.

(¶.16) Right to private defence is valuable right and it is basically preventive in nature and not punitive. A person who provokes his adversary to launch an attack is not entitled to right of private defence.<sup>24</sup> Right to private defence is not available against lawful acts.<sup>25</sup> It is humbly submitted that the deceased being a police officer was performing his lawful duty of maintaining law and order and to prevent public nuisance at the bus stop created by the accused.

(¶.17) The right of private defence is available to only such person who is suddenly confronted with the necessity of averting danger, which is not self created. Such necessity must be real or apparent.<sup>26</sup> In the present matter, there was no immediate danger to the accused. Rather, it was self created and planned so as to use the exception of private defence for the act they committed. Right to private defence is also not available when the accused inflicts blows on vital parts of the body of unarmed trespasser in sitting position.<sup>27</sup> In the present matter, though the deceased was equipped with a pistol, still it was equivalent to unarmed since he never intended to use it. Where after exchange of harsh words, the deceased has hurled stones causing injury to one accused, while the

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<sup>24</sup> Pandharinath Punjaram Lahane v. State of Maharashtra, (2008) CriLJ (NOC) 79 BOM (DB).

<sup>25</sup> Raising Mohima v. State of Gujrat, AIR 1962 Guj 203; Chandra Bhan v. State, AIR 1954 All 39; Guru Charan Singh v. State, AIR 1965 All 543; Ranbaran v. State of Bihar, AIR 1963 Ori 52; Basan Bhowmick v. State, (1963) 1 CriLJ 46.

<sup>26</sup> Haren Das v. State of Assam, (2012) CriLJ 1476 (Gau).

<sup>27</sup> Maguni Charan Pradhan v. State Of Orissa, (1991) 72 CutLT 413 (SC).

deceased was unarmed, and the injuries of the accused were not proved by the production of medical evidence, held that the accused were not entitled to right to private defence, thus, their conviction on the charge of murder was held proper.<sup>28</sup>

2.4. THE ACCUSED HAD A COMMON INTENTION U/S 34 OF THE RABAT PENAL CODE, 1860.

(¶.18) The three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. Once criminal act and common intentions are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise.<sup>29</sup> Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally.

(¶.19) In instant matter, the criminal act of accused no.1 was aided by accused no. 2 on the advice of accused no.3 in pursuance of common intention & motive since they were all the members of opposition party alliance. Accused no.3 only stimulated the idea of causing death in the mind of Abhishek & Angad in pursuance to which they both researched about police action and legal provisions regarding self defence and thereafter executed a premeditated crime. Therefore, the accused are guilty of murder under Section 302 r/w Section 34 of the Indian Penal Code.

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*ISSUE 3. THAT ACCUSED (ABHISHEK & ANGAD) SHOULD BE HELD GUILTY FOR OBSTRUCTING PUBLIC SERVANT IN DISCHARGE OF PUBLIC FUNCTIONS.*

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(¶.20) Section 186 of Rabat Penal Code provides for punishment for the offence of voluntarily obstructing a public servant in the discharge of his public functions.<sup>30</sup> It is most humbly submitted that accused are liable to be held guilty U/s 186 since accused [3.1] voluntarily obstructed Inspector Chaudhary while [3.2] performing his legitimate public function.

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<sup>28</sup> Sheshrao Nana Dhawale v. State of Maharashtra, (2009) CriLJ 869 (Bom).

<sup>29</sup> Shyamal Ghosh v. State of West Bengal, (2012) CriLJ 3825 (SC)

<sup>30</sup> Shikha Goyal & Anr. v. Employees State Insurance Co., 2000 (2) ALD (Cri) 442; Kim Gangte v. State of Manipur, 2006 (3) GLT 356.



### 3.1. THAT THE ACT OF ACCUSED WAS VOLUNTARY.

(¶.21) A person is said to cause an effect “voluntarily” when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.<sup>31</sup> It relates to the causation of effects and to the doing of acts from which those effects result.<sup>32</sup> To constitute obstruction it is not necessary that there should be actual criminal force. It suffices if there is either a show of force, or a threat of force, or preventing the execution of any act by a public servant even by word of mouth.<sup>33</sup> The term ‘voluntarily’ is applied to the test of ‘intention’. The intention may be expressed or implied. It must be presumed that when a man voluntarily does an act, knowing at the time, that in the natural course of events, a certain result will follow, he intends bringing about that result.<sup>34</sup> For the purpose of criminal law, intention of the offender may be determined from the nature of the injury, the weapon used, the part of the victim’s body affected, force used and other related circumstances.<sup>35</sup> In the present matter, the incident of 30th March 2016 when deceased, Inspector Chaudhary, warned the accused not to create public nuisance carrying out his public duty for which he was encountered with harsh words<sup>36</sup> clearly infers that the accused wilfully obstructed the police officer in performance of his public duty to prevent nuisance.

### 3.2. THAT THE INSPECTOR WAS PERFORMING HIS LEGITIMATE PUBLIC FUNCTION.

(¶.22) It is the duty of every police officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect

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<sup>31</sup> §.39 Rabat Penal Code 1860.

<sup>32</sup> Abdul Majeed v. State of Kerala, (1994) CriLJ 1404 (Ker).

<sup>33</sup> State v. Babulal & Ors., 1956 (58) BomLR 1021; See also State of Bihar v. Ramanand Singh, (1966) BLJR 300.

<sup>34</sup> R v. Lakshman, 26 ILR Bom 558; See also Muthu v. Pallamuthu, 12 CriLJ 30; R v. Sunkseethiah, 4 ILR Mad 92; Killikyetra Bomma v. R, 14 CriLJ 207; R v. Hancock, 1986 LRC (CR) 726 ; Wealth Tax Officer v. Trustees of Heh the Nizam’s Jewellery Trust, [1990] 35 ITD 402 (Hyd).

<sup>35</sup> Shyam Lal v. State of U.P., (1968) 2 SCWR 801; See also Ram Rup v. Crown, AIR 1951 Punj 418.

<sup>36</sup> Page 2 ¶.14 Fact Sheet.

and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists; and it shall be lawful for every police officer, for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking- shop, gaming- house or other place of resort of loose and disorderly characters.<sup>37</sup> Prevention of crime is one of the prime purposes of the constitution of a police force.<sup>38</sup> In connection with the duties spoken of in section 23 of The Police Act, 1861, it will be necessary to keep discrete surveillance over reputed bad characters, habitual offenders and other potential offenders.<sup>39</sup> It is the normal duty of a police personnel to detect and bring offenders to justice and to apprehend all persons whom he is legally authorised to apprehend, and for whose apprehension sufficient ground exists.<sup>40</sup> Whoever voluntarily causes obstruction to any person being a public servant in the discharge of his duty as a legitimate public function, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant shall be punished for the same.<sup>41</sup> The police shall strive in accordance with the law, to ensure that all persons enjoy the freedoms and rights available under the law by ensuring peace and order, integrity of the nation, security of the State and protection of human rights.<sup>42</sup>

**(¶.23)** Thus, in view of the above, it was legitimate public function of deceased to prevent public nuisance by all necessary & reasonable means. He was authorised to do so by law. The counsel humbly submits that since the accused were creating public nuisance at the bus-stop and thereby

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<sup>37</sup> §.23 The Police Act 1861.

<sup>38</sup> Sunkara Satyanarayana v. State of Andhra Pradesh, Home Department and Ors., (2000) CriLJ 1297 (AP).

<sup>39</sup> Malak Singh etc. v. State of Punjab & Haryana & Ors, AIR 1981 SC 760 ; Ram Saran Goyal v. State of U.P. & Ors, 2003(6) AWC 5515.

<sup>40</sup> Kalpana Pal v. State of West Bengal and Ors., 2011 (3) CHN 460.; Shyam Narain Dwivedi v. State of U.P. Ors., 2014 (3) ALJ 106.

<sup>41</sup> Shiv Kumar Singh v. State of U.P. & Ors., 2007 (69) ALR 433.

<sup>42</sup> Umesh Chandra Pandey v. State of U.P. & Others, 2008 (3) AWC 2939.

troubling the public standing at bus stop, it was deceased foremost duty to prevent that nuisance and use all necessary means to do so which he responsibly acted. He also warned the accused not to create nuisance<sup>43</sup> but it was futile because it only lead to exchange of harsh words, the accused did not admitted their mistake. Thereafter, at the time of incident, when deceased got to know that accused were again creating nuisance at the bus-stop, he arrived there to prevent nuisance but in the wrangle, accused hit deceased with metal rod.

IN ARGUENDO, UNIFORM OF POLICE OFFICER IS IMMATERIAL FOR PERFORMANCE OF HIS FUNCTIONS.

(¶.24) In arguendo, uniform of the police officer is not an issue. §.22 of The Police Act, 1861 clearly indicates that a police officer is always on duty whether he is in uniform or not.<sup>44</sup> Section 22 of the Act, as its long title shows, was enacted to reorganise the police and to make it a more efficient instrument for the prevention and detection of crime. Investigation comprehends detection of the crime.<sup>45</sup> The material thing to consider would not be the uniform he is required to wear but his functions, powers and duties.<sup>46</sup>

(¶.25) Also, there is a presumption that power vested in a high authority would be exercised reasonably, fairly and in an impartial manner.<sup>47</sup> When the power to initiate acquisition under the Act has been vested in a very high and responsible officer, he is expected to act with caution and impartiality while discharging his duties under the Act.<sup>48</sup> Thus in the instant matter, deceased being Inspector & a responsible officer is presumed to act fairly & reasonably while performing his legitimate public function which was obstructed by accused (Abhishek & Angad). Hence, Accused no.1 & 2 should be held guilty for offence U/s 186 of the Rabat Penal Code, 1860.

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<sup>43</sup> Page 2 ¶.14 Fact Sheet.

<sup>44</sup> Sainik Kanaiyalal Kalumal v. State, (1962) 3 GLR 739; Sariful Hussain v. State of Assam, (1991) CriLJ 3154.

<sup>45</sup> State of Bihar & Anr. v. J.A.C. Saldanha & Ors, AIR 1980 SC 326.

<sup>46</sup> State of Punjab v. Barkat Ram, AIR 1962 SC 276.

<sup>47</sup> R.S. Dass v. Union of India, AIR 1987 SC 593.

<sup>48</sup> Gurbachan v. State of Bombay, AIR 1952 SC 221.

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*ISSUE 4. THAT ACCUSED (ANGAD & DUSHYANT) SHOULD BE HELD GUILTY FOR ABETMENT.*

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(¶.26) It is humbly submitted before this Hon'ble Court that accused should be held guilty for abetment since [4.1] Dushyant instigated [4.2] though not present at spot & [4.3] Angad intentionally aided Abhishek for [4.4] committing offences punishable U/s 186 & 302 Rabat Penal Code, 1860.

(¶.27) Abetment involves a mental process of instigating a person or intentionally aiding that person in doing of a thing.<sup>49</sup> Three things are essential to complete abetment as a crime. There must be an abetter; he must abet; and abetment must be of an offence.<sup>50</sup> A person abets the doing of an act in either of the three ways which can be: (a) instigating any person to do an act; or (b). engaging, with one or more persons, in any conspiracy for the doing of that act; or (c). intentionally aiding the doing of that act.<sup>51</sup>

4.1. INSTIGATION BY DUSHYANT (ACCUSED NO.3) TANTAMOUNT TO ABETMENT.

(¶.28) That Dushyant instigated accused no.1 and thereby abetted to commit offence U/s 186 & 304 RPC. Using several synonyms, the Supreme Court has explained that 'instigation' means to "*goad, urge forward, provoke, incite, or encourage*" the doing of something.<sup>52</sup> The physical act 'urging forward' or 'instigation' involves doing an act by strongly advising, persuading to make a person do something or by pushing in order to make him move more quickly in a forward direction. It can be committed by doing some act, either verbal or physical or even by a wilful omission or conduct.<sup>53</sup> Instigation consists in actively suggesting and stimulating other to act by any means or language,

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<sup>49</sup> Sohan Raj Sharma v. State of Haryana, (2008) CriLJ 2569; State of Gujarat v. Pradyuman Ramanlal Mehta, (1999) CriLJ 736.

<sup>50</sup> Emperor v. Parimal Chatterji, AIR 1932 Cal 760; Lalitbhai Vikramchand Parekh v. State of Gujarat & Ors., MANU/GJ/0165/2015

<sup>51</sup> Bashir Mahommad v. Peer Khan, (1972) WLN 139; Malan v. State of Bombay, AIR 1960 Bom 393; Jitender Kumar v. State of Himachal Pradesh, AIR 2015 HP 233.

<sup>52</sup> Ramesh Kumar v. State of Chhattisgarh, (2001) 9 SCC 618; Emperor v. Parimal Chatterjee, AIR 1932 Cal 760; Girjashankar Jagannath Prasad v. State of Madhya Pradesh, (1988) MPLJ 421; State of Punjab v. Shyam Lal, (1992) 1 DBC 477 (P&H) (DB).

<sup>53</sup> Cyriac v. Sub-Inspector of Police, Kaduthuruthy, (2005) CriLJ 4322 (Ker).

direct or indirect, whether it takes the form of express solicitation or of hints or encouragement.<sup>54</sup> In the instant matter, Dushyant (Accused no.3) being senior member of the party was supposed to act in a responsible manner but on being enquired by accused no.1 (his sub-ordinate leader), he instead of advising accused no.1 to report the incident to senior police authorities & to act in accordance with law actively suggested him to kill the deceased and comforted him not to be afraid or worry and that the party will support and protect him, come what may.<sup>55</sup> He also further encouraged him by showing party's faith on accused no.1.<sup>56</sup> His statements incited Abhishek to commit the offence in question since it was only after his advice accused browsed about legal provisions related to self defence & police action during riots, provocations etc.<sup>57</sup> as is evident from Internet browsing history of the accused no.1 personal computer already attached on court file as Exhibit 4. Moreover, the telephonic conversation of the three accused after the incident on 7th April, 2016 attached on court file as Exhibit 5 further establishes that the idea of causing injury to deceased was triggered on the advice of Dushyant.

#### 4.2. PRESENCE OF ABETTER AT THE SPOT IMMATERIAL.

(¶.29) Presence at the time of commission of crime is not necessary for abetting a crime.<sup>58</sup> That so long as the accomplice is participating by rendering aid, assistance or even mere encouragement<sup>59</sup> to the actual preparation at the very time when the latter is effecting the criminal purpose, no matter

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<sup>54</sup> Re Laxminarayana Aiyar, AIR 1918 Mad 738; Raghunath Dass v. Emperor, AIR 1920 Pat 502; Pramatha Nath v. State, AIR 1951 Cal 581; Emperor v. Amiruddin Salebhoy Tyabjee, 23 CriLJ 466; Damodar v. State, AIR 1955 Bom 61; Girja Shankar Jagannath Prashad v. State of Madhya Pradesh, (1988) MPLJ 421; Emperor v. Mihan Singh, AIR 1924 Lah 440; Ved Prakash Bhajji v. State of Madhya Pradesh, (1995) CriLJ 893 (MP).

<sup>55</sup> Page 2 ¶.15 line 8 Fact Sheet.

<sup>56</sup> Page 2 ¶.15 last line Fact Sheet.

<sup>57</sup> Page 3 ¶.16 Fact Sheet.

<sup>58</sup> Noor Mohd Yusuf v. State of Maharashtra, AIR 1971 SC 885; Parasa Raja Manikyala Rao & Anr. v. State of A.P., AIR 2004 SC 132.

<sup>59</sup> Wilcox v. Jefferey, [1951] 1 All ER 464.

how far away from the spot he may be,<sup>60</sup> he is certainly aiding & abetting it.<sup>61</sup> Therefore, Dinesh assisted & abetted accused no.1 & 2 though he was not present at the spot of the crime.

#### 4.3. INTENTIONALLY AIDING BY ANGAD (ACCUSED NO.2) AMOUNTS TO ABETMENT.

(¶.30) Reading Cl. 3 of s. 107, IPC with explanation 2, for abetment by aid, four things must be combined: i) Aid must be actually afforded by means of an ‘act or illegal omission’; ii) There must be intention to aid thereby;<sup>62</sup> iii) The commission of the offence must be facilitated thereby; and iv) The act or omission must take place either prior to, or at the time of, the commission of the act intended to be aided.<sup>63</sup> If one of these elements is wanting, there can be no abetment. A person abets by aiding when by the commission of an act or illegal omission he intends to facilitate, and does facilitate, the commission of the crime abetted.<sup>64</sup> Where A, facilitates the stabbing of C by B by holding B’s hands while B stabbed C, A must be deemed to have aided the commission of the offence within the meaning of explanation.<sup>65</sup> Assisting a murder by holding the legs of the deceased when he was being murdered would be abetting the murder, if the assistance given is intentional.<sup>66</sup> A servant who opened the door so that a man can steal his master’s property was held to be an accomplice or accessory to the crime.<sup>67</sup> Analogically, Angad (Accused no.3) also intentionally aided as an accessory to the offence committed by Abhishek.

(¶.31) Chain of events prior to the time of commission of offence proves that the offence would not have been possible without interposition & intentional aid by accused no.3. Firstly, he with

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<sup>60</sup> Breese v. State, (1861) 12 Ohio 146.

<sup>61</sup> I, RUSSELL ON CRIME, 146 (12th Ed., Universal Law Publishing Co., 2012).

<sup>62</sup> Trilok Chand v. State of Delhi, AIR 1977 SC 666; Shri Ram v. State of U.P., AIR 1975 SC 175; Jainoon v. State, (1990) LW (Cr) 346 Mad.

<sup>63</sup> I, ‘R A Nelson’s Indian Penal Code’ 724 (LexisNexis, Gurgaon, 11th Ed, 2016).

<sup>64</sup> Faguna Kanta Nath v. State of Assam, AIR 1959 SC 673; Harji v. State of Rajasthan, (1978) Raj LW 106; State of Madhya Pradesh v. Mukesh and Ors. 2007 (1) ACR 730 (SC).

<sup>65</sup> Aiyappan Kuttan v. State, AIR 1955 Tr & Coch 266; See also R v. Eshan Meah, 12 WR Cr 52.

<sup>66</sup> Bachchan Lal v. State, AIR 1957 All 184.

<sup>67</sup> Emperor v. Barendra Kumar Ghose, AIR 1924 Cal 257.

Abhishek threatened complainant & his friend of dire consequences if they were seen anywhere near the college and also pelted stones on them. Angad even searched the legal provisions of private defence along with accused no.1.<sup>68</sup> Secondly, both were the reasons of public nuisance on the bus stop thereby troubling people standing at the bus stop.<sup>69</sup> Thirdly, he also obstructed the deceased, who intervened to control the situation being police official, in carrying out his legitimate public function. Further, at the crime scene, Angad incited Abhishek to urge foreword for causing injury to the deceased who was acting in good faith and performing his public duty.

#### 4.4. THE ACCUSED ABETTED FOR AN OFFENCE.

(¶.32) That accused (Dushyant & Angad) abetted for obstructing public servant in discharge of public functions & cause death of deceased. The person abetting is an abettor only when the abetment is for an offence.<sup>70</sup> Abetment is a substantive offence quite irrespective of the other offence which forms its subject matter.<sup>71</sup> The offence of abetment is complete when the alleged abettor has instigated another, or intentionally aided another or engaged with another, in a conspiracy to commit the offence.<sup>72</sup> In the instant matter, Angad (Accused no.2) intentionally aided Abhishek and Dushyant (Accused no.3) instigated Abhishek (accused no.1) to commit offences, the consequence of which he is charged for in the present matter as substantiated above. Hence, accused should be held guilty of offence U/s 107 RPC also by this Hon'ble Court in the interest of justice.

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<sup>68</sup> Page 3 ¶.16 Fact Sheet.

<sup>69</sup> Page 3 ¶.16 line 3 Fact Sheet.

<sup>70</sup> Purna Chandra Kundu v. Emperor, AIR 1914 Cal 272; Ranchhodbhai Manjibhai Chovatia and Ors. v. Pravinbhai Kalubhai Italiya and Ors., 2016 GLH (1) 268.

<sup>71</sup> V Sessa Ayyar v. Venkatasubba Chetty, AIR 1924 Mad 487.

<sup>72</sup> Jamuna Singh v. State of Bihar, AIR 1967 SC 553; Trilok Chand v. State of Delhi, AIR 1977 SC 666; State of Maharashtra v. Pandurang Ramji Sanap, (1971) MahLJ 408. Shaik Ibrahim v. State of A.P., rep. by the Public Prosecutor, High Court of A.P., 2005 (1) ALD (Cri) 163.

## PRAYER

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

1. **Convict** Mr. Abhishek (Accused no.1) for the offence of obstructing public servant in discharge of public functions and murder under sections 186/302/34 of Rabat Penal Code, 1860.
2. **Convict** Mr. Angad (Accused no.2) for the offence of abetment, obstructing public servant in discharge of public functions and murder under sections 107/186/302/34 of Rabat Penal Code, 1860.
3. **Convict** Mr. Dushyant (Accused no.3) for the offence of abetment and murder under sections 107/302/34 of Rabat Penal Code, 1860.

**AND/OR**

Pass any other order it may deem fit, in the interest of Justice, Equity and Good Conscience.

*All of which is most humbly and respectfully submitted*

Place: Mavada

Sd/-

Date: \_\_ September, 2016

**PUBLIC PROSECUTOR**