



IN THE COURT OF SESSIONS

MAVADA, JAGUTAR, UNION OF RABAT

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S.C. CASE No. 101 OF 2016

(UNDER SECTIONS 4, 6, 26, 177, 184 AND 223 OF CODE OF CRIMINAL PROCEDURE, 1973)

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IN THE MATTER OF

STATE OF JAGUTAR.....PROSECUTION

VERSUS

ABHISHEK LEPAT .....ACCUSED NO. 1

ANGAD LEPAT.....ACCUSED NO. 2

DUSHYANT LIKO.....ACCUSED NO. 3

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*-MEMORIAL ON BEHALF OF THE PROSECUTION-*

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**STATEMENT OF JURISDICTION**

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The Prosecution, most humbly and respectfully, submits that this Honourable Court has the requisite territorial and subject matter jurisdiction to entertain and adjudicate this matter under Sections 4<sup>1</sup>, 6<sup>2</sup>, 26<sup>3</sup>, 177<sup>4</sup>, 184<sup>5</sup> and 223<sup>6</sup> of the Code of Criminal Procedure, 1973. It is further submitted that all procedural requirements have been adhered to in the prescribed manner.

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<sup>1</sup> Trial of offences under the Rabat Penal Code and other laws, Section 4, Criminal Procedure Code, 1973 [“CrPC”].

<sup>2</sup> Classes of Criminal Courts, Section 6, CrPC.

<sup>3</sup> Courts by which offences are triable, Section 26, CrPC.

<sup>4</sup> Ordinary place of Inquiry and Trial, Section 177, CrPC.

<sup>5</sup> Place of Trial for offences triable together, Section 184, CrPC.

<sup>6</sup> What Persons may be charged jointly, Section 223, CrPC.

STATEMENT OF FACTS

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-BACKGROUND-

Abhishek (“A1”) and Angad (“A2”) are friends and A1 is politically very active. A1 is the President of the College Union and organises several protests. They constantly got into altercations with other students in the College. Tanya (“DW4”) and Natasha (“DW5”) are members of the Union, who are close to A1 and A2.

-CIRCUMSTANCES LEADING TO THE DEATH OF THE DECEASED-

One evening when all four of them were standing at the bus stop, Dinesh (“PW4”) and Peter (“PW5”) (“the Bikers” collectively) came on a bike and A1 threatened them with dire action.

The same incident occurred again after a few days and this time A1 and A2 started pelting stones at the bikers. Later that evening, police officer, Amit Chaudhary (“Deceased”) approached A1 and A2 and told them to mind their own business and not to threaten the bikers. Thereafter, A1 and A2 went to their political leader, Dushyant (“A3”) who instructed them to kill the Deceased.

For a whole week, A1 and A2 browsed details regarding legal protection under self-defence and thereafter when the bikers came to the bus stop, they again started pelting stones at them. The Deceased came to rescue the bikers and caught hold of A1. Enraged, A1 took a rod that was lying in the auto garage next to the bus stop and threw it at the Deceased. The Deceased got hit on the head by the rod, fell on the pavement and got hit again by the stump of a tree.



**STATEMENT OF CHARGES**

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- I. Abhishek Lepat, Angad Lepat and Dushyant Liko have been charged for the offence under Section 304 of the Rabat Penal Code, hereinafter referred to as the RPC, for causing death of Amit Chaudhary.
- II. *Alternatively*, Abhishek Lepat, Angad Lepat and Dushyant Liko have been charged for the offence under Section 304A of the RPC for negligently causing the death of Amit Chaudhary.
- III. Abhishek Lepat, Angad Lepat and Dushyant Liko have been charged for the offence under Section 34 of the RPC for committing criminal act in furtherance of a common intention.
- IV. Abhishek Lepat and Angad Lepat have been charged for the offence under Section 186 of the RPC for obstructing Amit Chaudhary, who is a public servant in discharge of his public functions.
- V. Angad Lepat and Dushyant Liko have been charged for the offence under Section 107 of the RPC for abetting Abhishek Lepat to murder Amit Chaudhary.
- VI. *Alternatively*, Angad Lepat and Dushyant Liko have been charged for the offence under Section 120B of the RPC for conspiring with Abhishek Lepat to murder Amit Chaudhary.

**ISSUES FOR CONSIDERATION**

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- I. Whether the Accused are liable under Section 304 read with Section 34 of the Rabat Penal Code?
- II. Whether A2 and A3 are liable under Section 107 of the Rabat Penal Code?
- III. Whether A1 and A2 are liable for obstructing a public servant in discharging his official functions?
- IV. Whether a Joinder of charges and criminal liability under Sections 304A and 120B of the Rabat Penal Code exists?

**SUMMARY OF ARGUMENTS**

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**I. The Accused are liable under Section 304 read with Section 34 of the RPC.**

A1 is liable for culpable homicide not amounting to murder under Section 304 of the Rabat Penal Code as he caused death pursuant to the intention of causing bodily injury likely to cause death. In the present case, in light of the weapon of attack, pre-meditation, and the history of his hostility towards police officers, it is established that A1 intended to cause bodily injury likely to cause death. In any event, it is well established that the Accused cannot deny having knowledge of the fact that throwing a weapon as dangerous as an iron rod is likely to cause death which negates the necessity to look at the intention of the accused, thereby making A1 liable under Section 304. Moreover, A2 and A3 are jointly liable for the offence as they shared common intention with A1 to execute their premeditated plan. A3 provided the encouragement to A1 and A2 while A2 acted in concert with A1 to attack the deceased in the garb of self-defence.

**II. A2 and A3 are liable for abetment under Section 107 of the RPC.**

A3 as the political leader of the Accused was in a position to influence them. As he detested the Deceased, he instigated A1 to kill the Deceased and subsequently, A1 and A2 jointly acted upon his words by beginning to research on the Deceased's background as well as legal provisions relating to self-defence. The time lapse between hatching the plan to masquerade their murder as self-defence and the commission of the act is a mere week, proving criminal intention and conspiracy. A2 and A3 are therefore liable for abetting A1 in murdering the Deceased.

**III. A1 and A2 are liable for obstruction under Section 186 of the RPC.**

To constitute an offence under Section 186, there must be a voluntary obstruction to a public servant in discharge of his public functions. A1 is liable for this offence since the Deceased was discharging his public function as a police officer trying to break the scuffle between the accused and the Bikers. Moreover, the act of throwing the rod was a voluntary obstruction as admitted by A1 himself. A2 is also liable for this offence since he shared common intention with A1 to cause the obstruction, as is evident by the attending circumstances.

**IV. Alternatively, joinder of charges and liability under 304A and 120B.**

Though not formally charged for the same, Sections 212 to 224 and Section 464 have been incorporated into the Code specifically to ensure that an Accused person does not escape justice merely on the basis of a technicality. The Accused may be held liable for a different offence than that he is charged of, if the same facts can be used to evidence that offence. In the event that the Accused are not held liable under Section 304 of the RPC, they can be held liable under 304A for the rash and negligent act of throwing a metal rod at the Deceased's head without thinking about any consequences. Further, if the Accused are not held liable under Section 107 of the RPC, they can be held liable under Section 120B for conspiracy since the same facts conclusively prove the presence of an agreement amongst the Accused to commit the offence.

## ARGUMENTS ADVANCED

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### **I. THE ACCUSED ARE LIABLE UNDER SECTION 304 OF THE RABAT PENAL CODE.**

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#### **A. Elements of the Offence**

Liability under Section 304 requires the fulfilment of two conditions: [a] the act of the Accused caused death, [b] the act is done with the intention of causing death or causing such bodily injury as is likely to cause death.<sup>7</sup> In this regard [c] even the knowledge that the act is likely to cause death will be deemed sufficient.<sup>8</sup>

Where death is caused by bodily injury, the person who causes the injury shall be deemed to have caused death, although by resorting to skilful treatment death may have been averted.<sup>9</sup>

#### **B. A1 caused the death of the Deceased.**

A1 picked up a metal rod from the Auto Repair Shop.<sup>10</sup> Subsequently, he threw it at the Deceased<sup>11</sup>, which resulted in intracranial haemorrhage, leading to death.<sup>12</sup> This is corroborated by the statements of all the witnesses, Exhibits recovered from the crime scene, the Post-Mortem Report as well as the Forensic Report.<sup>13</sup> Thus, it is incontestable that A1 has caused the death of the Deceased.

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<sup>7</sup> Section 304, Part I, Rabat Penal Code [“RPC”]; *Ghansham v. State of Maharashtra*, 1996 CrLJ 27 (Bom).

<sup>8</sup> Section 304, Part II, RPC; *Pularu v. State of MP*, AIR 1993 SC 1375.

<sup>9</sup> Explanation 2, Section 299, RPC.

<sup>10</sup> Statement of Abhishek, Annexure 5, Proposition.

<sup>11</sup> *Id.*

<sup>12</sup> Annexure 4, Proposition [The Forensic Report is admissible as evidence according to Section 293 of CrPC].

<sup>13</sup> Annexures 3, 4, 5, Proposition.

**C. There was intention to cause bodily injury likely to cause death.**

Section 304 Part II, does not question whether the injury intended to inflict was a serious or a trivial one, but only whether the accused intended to inflict the injury that is proved to be present.<sup>14</sup> The factors to determine such intention are, *inter alia*, the degree of force released in wielding the weapon; the antecedent relations of the parties;<sup>15</sup> whether the act was pre-meditated; the nature of weapon used; and the manner of assault on the accused.<sup>16</sup>

Further, motive can serve as a clue to intention.<sup>17</sup> As a rule under criminal law, every man is presumed to intend the natural and probable consequences of his acts, and the voluntary nature of the act should be understood by causation of effects.<sup>18</sup> There should be a fixed direction of mind to do an act in a particular manner stimulated by motive.<sup>19</sup>

In the subsequent arguments, the Prosecution shall establish that the immediate events leading up to the act were simulated by motive, and hence the injury was intentional.

**C.1. The weapon used and the manner of attack prove the intention of the Accused**

On the day of the incident, A1 and A2 created a ruckus by throwing stones at Dinesh and Peter.<sup>20</sup> Subsequently, the Deceased intervened to control the situation and during this time, the two Accused became violent.<sup>21</sup> Despite having the option of running away, A1 ran towards the Auto Repair Shop and chose a piece of hardware (a metal rod) which he believed

<sup>14</sup> *State of Karnataka v. Vedanayagam*, (1995) 1 SCC 326.

<sup>15</sup> *Virsa Singh v. State of Punjab*, AIR 1958 SC 465.

<sup>16</sup> *Illathody Beeravan v. State of Kerela*, 14th July, 2016, Supreme Court; *Bavisetti Kameswara Rao v. State of Andhra Pradesh*, AIR 2008 SC 1854.

<sup>17</sup> *Basdev v. State of PEPSU*, AIR 1956 SC 488.

<sup>18</sup> *Abdul Majeed v. State of Kerala*, 1994 CriLJ 1404.

<sup>19</sup> *S. Raghbir Singh Sandhawalia v. The Commissioner of Income Tax*, AIR 1958 PH 250.

<sup>20</sup> Statement of Abhishek, Annexure 5, Proposition.

<sup>21</sup> Statement of Auto Garage Worker, Annexure 5, Proposition.

could cause death or injury likely to cause death. The fact that he hit the weapon on the ground before using it,<sup>22</sup> further confirms that he calculatedly chose such a weapon.

Subsequently, A1 threw the rod from a distance,<sup>23</sup> so as to acquire enough momentum to cause the injury in question.<sup>24</sup> He even aimed it at the head of the deceased, which in common knowledge is the most sensitive part of the body.<sup>25</sup> Thus, the weapon and manner of attack prove that A1 intended to cause bodily injury likely to cause death.

C.2. The act was pre-meditated.

A week before the incident, A1 and A2 had created a ruckus by pelting stones at the Bikers, wherein the Deceased had warned them against such activities.<sup>26</sup> This provoked them into researching on the Deceased's background as well as legal provisions regarding self-defence over the week between the altercation with the Deceased and his death.<sup>27</sup> Such conduct shows that A1 and A2 had begun planning ways to kill the police officer in a manner that gave an impression of self-defence.

Eliminating the probability of coincidence is the fact that A1 passed by the Auto Repair Shop every day on his way from the College to the bus stop, and was thus, aware of the equipment available at the shop.<sup>28</sup> In this light, the fact that he ran directly towards that particular shop and picked up the rod, shows that his act was premeditated.

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<sup>22</sup> Statement of Auto Garage Worker, Annexure 5, Proposition.

<sup>23</sup> Exhibit 3, Proposition.

<sup>24</sup> Annexure 3, Proposition.

<sup>25</sup> *Gudu Ram v. State of HP*, (2013) 11 SCC 546.

<sup>26</sup> Statement of Abhishek, Annexure 5, Proposition.

<sup>27</sup> Exhibit 4, Proposition.

<sup>28</sup> Statement of Abhishek, Annexure 5, Proposition.

The conversation amongst all the Accused also shows that A3 had encouraged A1 and A2 to kill the Deceased to uphold the party's reputation.<sup>29</sup>

C.3. The antecedent relations clarify the motive.

A1 was the President of the Student Union of his college that was close to the Opposition<sup>30</sup> and organised protests against the Government.<sup>31</sup> A1 and A2 had repeatedly indulged in altercations, arson and vandalism in College, showing their predisposition to violence to reach their political ambitions.<sup>32</sup> Such traits are further revealed through a protest started by A1 at the behest of his political masters wherein he rebelled against the arrest of a leader who freely advocated killing policemen,<sup>33</sup> and also through their aggressive conduct towards the Bikers<sup>34</sup> because of their affiliation to the Opposition Party. Based on their internet searches,<sup>35</sup> A1 and A2 subsequently misjudged the Deceased's actions as a police officer to be politically motivated and against their interests.

The chain of events and evidence therefore prove that the Accused had the requisite motivation, willingness and intention to kill the Deceased under the guise of self-defence.

**D. In any event, there was knowledge that the act was likely to cause death.**

Even without a confirmation of intention, mere knowledge on part of the accused will suffice for conviction.<sup>36</sup> Knowledge includes all instances of rash acts by which death is caused, for

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<sup>29</sup> Exhibit 5, Proposition; Statement of Dushyant, Annexure 5, Proposition.

<sup>30</sup> ¶ iii, Annexure 6, Proposition.

<sup>31</sup> *Id.*

<sup>32</sup> ¶s 7, 8, Proposition.

<sup>33</sup> Annexure 6, Proposition.

<sup>34</sup> Statement of Abhishek, Annexure 5, Proposition.

<sup>35</sup> Exhibit 5, Proposition.

<sup>36</sup> Section 299, RPC.



rashness imports knowledge of the likely result of an act which the actor does in spite of the risk.<sup>37</sup> The word likely connotes a “real risk not to be ignored”.<sup>38</sup> It has been previously held that when an object such as a metal rod is used as a weapon, the knowledge that such act is likely to cause death can be easily attributed to the accused.<sup>39</sup>

A1 used an iron rod to hit the Accused on a sensitive part of the body.<sup>40</sup> The force used to throw the rod was high enough to fracture the skull of the Deceased.<sup>41</sup> Therefore, it is clear that A1 had the knowledge that such an act was likely to cause death.

**E. The general exception of private defence under Section 100 is not applicable.**

**E.1. Essentials**

The right to private defence is a general exception whereby homicide is classified as lawful.<sup>42</sup>

Three essentials must be fulfilled in a manner to establish the Accused’s innocence *beyond all reasonable doubt*: [a] there was reasonable apprehension of danger to the body from the attempt or threat to cause death or grievous hurt; [b] the right was exercised only after the commencement of reasonable apprehension<sup>43</sup> and continued *only as long as the reasonable apprehension of danger to the body continued*;<sup>44</sup> and [c] no more harm was inflicted than is

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<sup>37</sup> *Raju v. State*, Criminal Appeal No. 1221/2012; THOMAS K.T. & RASHID, M.A., RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE (Lexis Nexis, 2014) [“**Ratanlal (2014)**”] 495.

<sup>38</sup> *R v. Whitehouse*, (1999) *The Times* December 10.

<sup>39</sup> *Surajit Sarkar v. State of West Bengal*, (2013) 2 SCC 146; *Yogeshwar @ Babloo v. State*, Criminal Appeal No. 1170/2011.

<sup>40</sup> Statement of Auto Garage Worker, Annexure 5, Proposition.

<sup>41</sup> Annexure 4, Proposition.

<sup>42</sup> *Ratanlal (2014)*, at 490.

<sup>43</sup> *George Dominic Varkey v. State of Kerala*, (1971) 3 SCC 275 cited in *Manjeet Singh v. State of Himachal Pradesh*, (2014) 5 SCC 697.

<sup>44</sup> *V. Subramani & Anr. v. State of Tamil Nadu*, 2005 CriLJ 1727.

necessary for the purpose of defence. Importantly, persons exceeding the right to private defence are punished under Section 304, Part I of the RPC.<sup>45</sup>

In order to establish this right, the injury received by the Accused, the imminence of threat to his safety, the injuries caused by the Accused and whether the Accused had time to have recourse to public authorities are all relevant factors to be considered.<sup>46</sup>

*E.2. There was no reasonable apprehension of death or grievous hurt.*

In the present case, there was no reasonable apprehension of death, since the gun was still buckled up inside the Deceased's holster.<sup>47</sup> The mere action of putting his hand on the holster could not have created any reasonable apprehension of death since the Accused was a trained Police Officer, performing his duty to control public nuisance.<sup>48</sup>

*E.3. In any event, the threat had ceased and the harm inflicted was disproportionate.*

A1 had already escaped and could have run away from the scene of riot, but he instead ran in the direction of the shop to get hold of a weapon, which he threw *after* he had escaped.<sup>49</sup> Even the weapon used was a heavy metal rod that could easily inflict damage incommensurate to the harm that was apprehended. It was aimed at the head, where common knowledge indicates that the damage caused would be the most.<sup>50</sup> Thus, his conduct is more in the nature of an attack than defence and cannot be exempted under this Section.

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<sup>45</sup> *Sundaramurthy v. State of Tamil Nadu*, AIR 1990 SC 2007.

<sup>46</sup> *Supra* Note 44.

<sup>47</sup> Statement of Tanya, Annexure 5, Proposition.

<sup>48</sup> Section 127, The Delhi Police Act, 1978.

<sup>49</sup> Statements of Abhishek and Angad, Annexure 5, Proposition.

<sup>50</sup> *Gudu Ram v. State of HP*, (2013) 11 SCC 546.

## **F. The accused shared common intention.**

### F.1. Elements of the offence

Section 34 of the RPC becomes applicable when [a] a criminal act is done by several persons; [b] the criminal act furthers the common intention of all. As a consequence, [i] each person is liable for the act done, and [ii] the liability of each such person would be in the same manner as if it were done by him alone.<sup>51</sup>

#### F.1.1. The word ‘act’ in Section 34 includes an omission.

The ‘act’ mentioned in the Section need not be an overt act. Failure of the co-accused to alert the victim, leading to a fatal blow can also be deemed to be an ‘act’ covered by Section 34.<sup>52</sup>

#### F.1.2. Physical presence is not necessary for conviction under Section 34.

Physical presence at the actual commission of the crime is not essential to invoke Section 34.<sup>53</sup> One can exhort the principal accused into the commission of the crime.<sup>54</sup> The essence of liability under Section 34 is to be found in the existence of common intention and presence of the offender leading to the doing of a criminal act is not a condition of its applicability.<sup>55</sup>

## F.2. There was common intention between A1, A2 and A3 to commit the act to cause death.

### F.2.1. A1 and A2 were highly suggestible and had a proclivity towards violence.

A1 and A2 are friends<sup>56</sup> who were both politically ambitious as well as predisposed to violence. At instance of his political masters, A1 organised a rally in support of Safal Rugu who planned to bomb the Parliament. Their willingness to go to the extent of supporting

<sup>51</sup> Section 34, RPC; *Nga Aung Thein*, (1935) 13 Ran 210.

<sup>52</sup> *Suresh v. State of UP*, (2001) 3 SCC 673.

<sup>53</sup> *Ramkhillawan Kushwaha v. State of Madhya Pradesh*, 1996 CriLJ 303.

<sup>54</sup> *Mohan Singh v. State of MP*, (1999) 2 SCC 428.

<sup>55</sup> CHANDRACHUD, Y.V. & MANOHAR V.R., RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE (LexisNexis, 2007) [“**Ratanlal (2007)**”] 127.

<sup>56</sup> Statement of Abhishek and Angad, Annexure 5, Proposition.

terrorists to tow the line of their political masters shows how highly suggestible they are. Presently, their conduct was informed by A3- who bore an animosity towards the Deceased.<sup>57</sup>

#### F.2.2 Common intention implies pre-meditation.

‘Common intention’ implies a premeditation or plan in furtherance of which a criminal act is committed. Such plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence.<sup>58</sup> A conviction can be meted out if the said person had prior concert with one or more persons for committing the offence.<sup>59</sup>

#### F.2.3. Common intention is to be proved by the circumstances.

Since direct evidence in respect of intention is difficult to procure, prior concert or prior plan of the accused has to be judged from the facts and circumstances of the case. The conduct of the accused and attending circumstances provide evidence required.<sup>60</sup>

The circumstances relevant for proving common intention are first, the presence of a common motive or ill will; second, the previous conduct before the of the assailants right before the occurrence; and third, the subsequent conduct of the assailants.<sup>61</sup>

#### F.2.4. The animosity of the co-accused towards the victim led to a preconceived plan.

A1 and A2 bore animosity towards the Deceased as he had tried to warn them<sup>62</sup> when they had gotten into a confrontation with the bikers.

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<sup>57</sup> Exhibit 5, Proposition.

<sup>58</sup> *Shyamal Ghosh v. State of West Bengal*, (2012) 7 SCC 646; *Bhopal Singh v. State of Rajasthan*, AIR 1968 Raj 305.

<sup>59</sup> *Krishna Govinda Patil v. State of Maharashtra*, AIR 1963 SC 1413.

<sup>60</sup> *Brathi v. State of Punjab*, AIR 1991 SC 319; *Kripal v. State of UP*, AIR 1954 SC 706.

<sup>61</sup> *Ratanlal (2007)*, at 211.

<sup>62</sup> ¶14, Proposition.

It further angered A1, A2 and A3 when they realised that PW4 was the son of a rival party MLA, PW5 his associate and that the Deceased too was affiliated to the ruling party.<sup>63</sup> When A1 discussed with A3 the earlier confrontation with the Deceased, A3 incited A1 to be more aggressive and kill the Deceased to please the Party which in turn would protect him.<sup>64</sup>

In the case of *Mohan Singh*,<sup>65</sup> the Accused was exhorted by father, who similar to A3, explicitly and in anger declared that the victim ought to be killed. It was at this time that the common intention between him and his father had matured. In the present case, A3's words exhorted A1 and A2 to spring into action and carry out the scheme of the common intention. A3 advised A1 and A2 to kill the Deceased and assured them a safe haven from consequences.<sup>66</sup> A1 and A2 then acted on his advice immediately, as they researched on provisions of self-defence and the Deceased's background to learn ways to masquerade their crime as self-defence. This was done in concert with A2 who was also motivated and prepared for such a confrontation with the Deceased and at the scene of occurrence, cued A1 to act at the right time to bring his conduct under the ambit of private defence. Thus, the circumstances show that A1, A2 and A3 are jointly liable for culpable homicide not amounting to murder as they had common intention to do so.

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## **II. A2 AND A3 ARE LIABLE UNDER SECTION 107 OF THE RATI PENAL CODE.**

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### **A. Elements of the Offence**

Liability under Section 107 entails the fulfilment of *any of the three* conditions: [a] instigation of a person to commit an offence; or [b] engagement in conspiracy to commit an

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<sup>63</sup> Statements of Abhishek and Angad, Annexure 5, Proposition.

<sup>64</sup> Annexure 6, Proposition.

<sup>65</sup> *Mohan Singh v. State of MP*, (1999) 2 SCC 428.

<sup>66</sup> Annexure 6, Proposition.

offence; or [c] intentionally aiding a person to commit an offence. To abet to assist or to give aid; to command, to procure or to counsel; to countenance; to encourage, induce, or assist; or to set another on to commit.<sup>67</sup>

**B. A2 abetted A1 in murdering the Deceased.**

When two people agree to carry out a design into effect, the very plot is an act in itself, and the act of each of the parties will be punishable, if for a criminal object.<sup>68</sup> If the abettor engages in the conspiracy in pursuance of which the offence is committed, then he is liable for abetment.<sup>69</sup> Abetment under Section 107 requires the commission of some act or illegal omission pursuant to the conspiracy.<sup>70</sup>

**B.1. A2 conspired with A1 to murder the Deceased.**

Conspiracy is the intention to commit a crime by joining hands with persons having the same intention.<sup>71</sup> A conspiracy is an agreement between two or more persons for doing an illegal act or doing by illegal means an act which may not itself be illegal.<sup>72</sup> Herein, meeting of minds of two or more persons is *sine qua non* and the conspiracy and its objective can be inferred from the surrounding circumstances and conduct of the accused.<sup>73</sup>

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<sup>67</sup> *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

<sup>68</sup> *Quinn v. Leathem*, (1901) AC 495.

<sup>69</sup> *Kalil Munda & Ors. v. King Emperor*, (1901) ILR 28 Cal 797.

<sup>70</sup> *State (NCT) of Delhi v. Navjot Sandhu*, (2005) 11 SCC 600.

<sup>71</sup> *CBI / SIT v. Nalini & Ors.*, (1995) 5 SCC 253.

<sup>72</sup> *Yogesh v. State of Maharashtra*, AIR 2008 SC 2991.

<sup>73</sup> *Ratanlal (2014)*, at 606; *Sudhir Shantilal Mehta v. CBI*, (2009) 8 SCC 1.

As proven before, the three Accused conspired to murder the Deceased.<sup>74</sup> Therefore, the series of events show a clear meeting of minds wherein the Accused agreed upon doing an act that was likely to cause the death of the Deceased.

B.2. Claiming self-defence was a part of their plot.

In the present case, after talking to A3, A1 and A2 browsed the internet for legal provisions relating to self-defence, for a whole week before the actual incident.<sup>75</sup> It is clearly established that they designed the plan of killing and then masquerading it as self-defence.

B.3. The browsing details establish the intention of A2.

The offence of abetment depends upon the intention of the person who abets.<sup>76</sup> The time lapse between the browsing of the provisions of self-defence and the commitment of the act is a mere week, thereupon showing that the browsing of information was done with a criminal intention, forming an integral part of the conspiracy.

B.4. There was an overt act consequent to the meeting of minds

Pursuant to the aforementioned plan, A1 threw a metal rod at the Deceased leading to his death– constituting overt action pursuant to formation of the agreement. Moreover, the rod was picked up from the auto garage which was right next to the College where A1 and A2 studied,<sup>77</sup> leading to a logical conclusion that they were aware of the fact that such hardware, could be easily found and the same could be used as a weapon. Thus, the murder weapon and course of action was determined beforehand and was masqueraded as self-defence.

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<sup>74</sup> Argument II.B.1.

<sup>75</sup> Exhibit 4, Proposition.

<sup>76</sup> *Supra* Note 73.

<sup>77</sup> Statement of Auto Garage Worker, Annexure 5, Proposition.

**C. A3 abetted A1 in murdering the Deceased.**

Instigation is one of the elements of Section 107. To satisfy the requirement of ‘instigation’ it is not necessary that the words used specifically suggest of the consequence. A reasonable certainty to incite the consequence is sufficient.<sup>78</sup> It is a settled position that a person is said to ‘instigate’ another to an act when he actively suggests or stimulates him to the act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.<sup>79</sup>

***C.1. A3 instigated A1 to murder the Deceased.***

A3 abhorred the Deceased and therefore advised A1 to kill him to save the Party’s reputation.<sup>80</sup> The conversation between A1 and A3 involved assurance of inculpability.<sup>81</sup> Such active solicitation or encouragement is sufficient to prove that A3 instigated A1.

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**III. A1 AND A2 ARE GUILTY OF OBSTRUCTING A PUBLIC SERVANT DISCHARGING OFFICIAL FUNCTIONS.**

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**A. Elements of the Offence**

Liability under Section 186, RPC arises when the following elements are present: [a] there is an obstruction; [b] the obstruction is caused by the accused; [c] the obstruction is voluntary; [d] the person obstructed is a public servant; [e] the obstruction is in the discharge of his public functions.<sup>82</sup>

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<sup>78</sup> *Chitresh Kumar Chopra v. State (Government of NCT of Delhi)*, AIR 2010 SC 1446.

<sup>79</sup> *Rajendra Prasad Jain v. Sheel Bhadra Yajee & Ors.*, AIR 1967 SC 1445.

<sup>80</sup> ¶ viii, Annexure 6, Proposition.

<sup>81</sup> Exhibit 5, Proposition.

<sup>82</sup> *Udayanath Barik v. State of Orissa*, 1989 CrLJ 2216 (Ori).



The word 'obstruction' connotes some overt act in the nature of violence or show of violence.<sup>83</sup> A show of force or a threat or any act preventing the execution of any act by a public servant is sufficient for obstruction.<sup>84</sup> Even mere words when accompanied with gestures or other signs causing reasonable apprehension of resistance in the mind of the public servant can cause obstruction.<sup>85</sup>

**B. A1 obstructed the Deceased from discharging his public functions.**

*B.1. The Deceased was a public officer discharging his public function.*

The Deceased was a police officer and hence a public officer within the meaning of Section 186. A police officer is always deemed to be on duty unless he is on suspension or leave.<sup>86</sup>

Herein, A1 and A2 pounced on the Bikers and threatened them due to the animosity they bore towards them for their affiliation to the rival political party. They then started pelting stones at the Bikers.<sup>87</sup> It is clear that the Deceased in his capacity of a police officer was trying to break the fight between the Bikers, A1 and A2 and discharge his public function.

*B.2. The act of throwing the metal rod was an obstruction and it was voluntarily caused by the accused.*

When a circle inspector was threatened him with a scythe, the accused was held liable for laying hold of the scythe as it amounted to physical obstruction.<sup>88</sup>

Further, the obstruction of throwing the metal rod was voluntary, as admitted by A1 himself.<sup>89</sup>

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<sup>83</sup> *Phudki v. State*, AIR 1955 All 104.

<sup>84</sup> *Babulal v. State*, (1956) 58 Bom LR 1021.

<sup>85</sup> *Abhiram Sahani v. State*, (1960) 2 OJD 401.

<sup>86</sup> Section 24, The Delhi Police Act, 1978; Section 28, Bombay Police Act, 1951.

<sup>87</sup> Annexure 6, Proposition.

<sup>88</sup> *State v. Vidya Sagar*, 1997 CrLJ 3893 (HP).

Thus, A1 is liable under Section 186 of the RPC for having voluntarily caused obstruction while the Deceased was discharging his public duties, by throwing the rod.

**C. A2 shared a common intention with A1 to obstruct the Deceased from discharging public function.**

As per their own statements, A1 and A2 knew that the Deceased was close to the Bikers,<sup>90</sup> and had encountered him before. At the place of occurrence, what proves the complicity of A2 in the present case is when he cued A1 to act at the right time to bring his conduct under the ambit of private defence. The attending circumstances thus show that the common intention between A1 and A2 to obstruct the police officer had been premeditated.

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**IV. ALTERNATELY, JOINDER OF CHARGES AND CRIMINAL LIABILITY UNDER SECTIONS 304A AND 120B OF THE RPC.**

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**A. The Accused can be punished with alternative offence under Section 221(2) of the CrPC even if they are not charged with it.**

By virtue of Section 221(2) of CrPC, a charge of can be preferred in the alternative against the Accused though they were not formally charged with it.<sup>91</sup> The set of facts revealing one offence of culpable homicide also give the possibility of an offence under the other.<sup>92</sup> Thus, the ingredients of Section 304A and Section 12B are prima facie made out from the materials on record and hence, the said offences can also be charged by virtue of Section 221(2) of CrPC.

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<sup>89</sup> Statement of Abhishek, Annexure 5, Proposition.

<sup>90</sup> Statement of Abhishek and Angad, Annexure 5, Proposition.

<sup>91</sup> Section 221(2), CrPC.

<sup>92</sup> CECIL, J.W., TURNER, RUSSEL ON CRIMES (Universal Publishers, 2001) 588.

**B. The Accused can be liable under Section 304A, irrespective of any intention or knowledge.**

Section 304A requires that the Accused did a rash or negligent act entailing death of a person as a direct consequence of rashness or negligence and it did not amount to culpable homicide.<sup>93</sup> The element of volition or intention is alien to the interpretation given to above provisions of law.<sup>94</sup> Even assuming the fact that A1 and A2 did not intend the death of the Deceased, A1 failed to exercise reasonable precaution when he threw an iron rod towards the head of the Deceased.

**C. It is immaterial whether A2 abetted A1 or not, he will be liable for conspiracy.**

While abetment requires the commission of a criminal act in furtherance of a common intention, liability for criminal conspiracy is established regardless of whether any illegal act follows from the agreement to commit it.<sup>95</sup> Having proven that there was [1] an agreement between two or more persons and [2] to do either an illegal act or an act by illegal means,<sup>96</sup> A3 and A2 are liable for conspiracy.

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<sup>93</sup> *Rakesh Gupta v. State of Uttar Pradesh*, AIR 1999 SC 2115; *State of Gujarat v. Hyder Ali*, AIR 1976 SC 1012; *Alister Anthony Pareira v. State of Maharashtra*, (2012) 2 SCC 648.

<sup>94</sup> *Kishan Chand v. State of Haryana*, 1971 CriLJ 7.

<sup>95</sup> *Dinanath*, (1939) Nag 644.

<sup>96</sup> Section 120, RPC.

**PRAYER FOR RELIEF**

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Wherefore, in the light of the facts states, issues raised, arguments advanced and authorities cited, it is most humbly and respectfully prayed before this Honourable Court that it may be pleased to:

- A. Convict all the three Accused under Section 304 r/w Section 34 of RPC.
- B. Convict A1 and A2 under Section 186 r/w Section 34 of RPC.
- C. Convict A2 and A3 under Section 107 of RPC.
- D. *Alternatively*, convict all the three Accused under Section 304A of RPC
- E. *Alternatively*, convict A2 and A3 under Section 120B of RPC.

Pass any other order or grant any other relief in the ends of justice.

*All of which is most humbly and respectfully submitted.*

Date: September 10, 2016

Counsel for Prosecution

Place: Jagutar, Rabat