

Team Code: 14

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**SURANA & SURANA NATIONAL JUDGMENT WRITING COMPETITION ON
CRIMINAL LAW 2016**

IN THE COURT OF SESSIONS, MAVADA.

S. C. No. 101 of 2016

IN THE MATTER OF

STATE OF JAGUTAR

(Prosecution)

Versus

ABHISHEK, ANGAD & DUSHYANT

(Defence)

JUDGMENT

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IN THE COURT OF ADDL. SESSIONS JUDGE, MAVADA

IN THE MATTER OF:

ID No.:

S.C. No. 101 of 2016.

FIR No.316/2016

PS Mavada

STATE OF JAGUTAR

...Prosecution

Versus

1. ABHISHEK LEPAT, Age 23, S/o Mr. Jiwan Lepat.

2. ANGAD LEPAT, Age 26, S/o Mr. Jitender Lepat

3. DUSHYANT LIKO

...Accused

Date of Filing of FIR : 07.04.2016

Date of Filing of Charge Sheet : 14.08.2016

Date of Decision : 11.09.2016

JUDGMENT

-11/09/2016

1. That accused persons, Abhishek Lepat (hereinafter referred to as Accused no.1); Angad Lepat (hereinafter referred to as Accused no.2); and Dushyant Liko (hereinafter referred to as Accused no.3) have faced trial on the allegation that accused no.2 & 3 had abetted accused no.1 and accused no.1 in pursuance to that abetment obstructed public servant in discharge of public functions & committed murder punishable under section 107/186/302/34 of Rabat Penal Code, 1860.

2. That First Information Report (in short 'FIR') in the case was registered on the basis of oral complaint by Mr.Dinesh (PW-4) who stated that he was harassed and threatened by the accused no.1&2 for reason that they used to visit the tea stall near their college. The accused threatened the complainant and his friend of dire consequences if they were seen anywhere near the college. It is the case of prosecution that on 7th April 2016, as the complainant stopped for a cup of tea with some friends, the accused pounced on them and threatened them. In the meanwhile, Amit Chaudhary (deceased/inspector) intervened and tried to control the situation but the accused picked up an iron rod from a nearby garage and hit the inspector on the head. The inspector fell and hit his head on the stump of a tree and remained unconscious. The complainant called the police. The victim was taken to the hospital and declared "brought dead".
3. That SI Hardik Bhatia, Investigating Officer (PW1) reached the crime spot and seized items vide Panchnama dt.7.04.2016. He after recording statements & conducting investigation filed the Charge sheet No.17/2016 dt.14.08.2016 in the present case and submitted in his statement as PW3 before court:-
 - i) Accused no.1 & 2 had obstructed Inspector Chaudhary from discharging his duties.
 - ii) They had met Accused no.3 and discussed how to deal with Inspector Chaudhary.
 - iii) Researched on the backgrounds of PW4, PW5 & deceased and also legal provisions regarding protection of self defence.

- iv) Motivated enough to prove their worth to their political bosses.
 - v) Were prepared to confront deceased on the date of incident.
4. Prosecution submitted an application under section 216 of Code of Criminal Procedure, 1973 for alteration of charge from section 304 RPC (Punishment for Culpable Homicide not amounting to murder) to 302 RPC (Punishment for murder). Ld. Public Prosecutor for the State contended that the evidence on record *prima facie* infers that accused has committed murder and should be charged under section 302 since his act does not falls within any of the exception enlisted under section 300 RPC, 1860 and this court is empowered to alter charges at any stage before the judgment is pronounced relying upon H.K. Raithatha v. State of Maharashtra¹. He further submitted that alteration of charges does not prejudice the accused since the defence would be given sufficient opportunity to examine the prosecution evidences in light of amended charges and thus alteration would not culminate the proceedings. The Ld. Public Prosecutor emphasized on Akbar v. State of Kerala,² purporting “if a petition is filed only to alter the charge and the charge is altered, it would not culminate the proceedings.”
5. This court allowed the application under section 216 of Cr.P.C. 1973. The court concluded that the act of accused no.1 does not falls within any of the exception enlisted under section 300 RPC,1860 and alteration does not

¹ (2009) CriLJ 439 (Bom).

² (2010) CriLJ 2555.

prejudice the accused since the accused were pleading self-defence as a general exception.

6. In order to establish their case, prosecution examined six witnesses before this Court:

- i. **PW1**, Dr.Kalra, Medical Officer-who conducted the post-mortem of the deceased dead body;
- ii. **PW2**, Dr.Russell, Coroner(Pathologist)- who concluded the Forensic Report;
- iii. **PW3**, S.I. Hardik Bhatia- Investigating Officer in the present case;
- iv. **PW4**, Mr. Dinesh -who lodged the FIR & was present at the crime scene;
- v. **PW5**, Mr. Peter -Friend of PW4 who was also threatened by accused;
- vi. **PW6**, Mr. Jatin- worker at Auto Garage next to bus stop outside Presidency College.

and produced before court **Ex.1**-Victim's Holster, **Ex.2**-Metal Rod, **Ex.3**- Photograph of Crime Scene, **Ex.3A**-Crime Sketch prepared at spot; **Ex.4**- Details of browsing history from personal computer of Accused no.1 from April 1st to 6th, 2016; **Ex.5**-Telephonic conversation between accused no.1 to 3 on April 7th, 2016 after incident.

7. On conclusion of prosecution evidence, statement of accused under section 313 Cr.P.C. was recorded, wherein all incriminating material/circumstances appearing against accused was put to him, to which he claimed innocence and alleged that he only acted in self defence.

8. According to defence version, PW4 & PW5 are goons and used to tease Tanya (DW4) & Natasha (DW5), friends of Accused no.1 & 2 and also students of same college. DW4 & DW5 complained regarding to Accused no.1&2 who then started to escort both these girls to bus stop. Defence alleged that one day when all four were standing at bus stop, PW4 & PW5 commented on friends of accused upon which accused no.1&2 shouted on them and they fled away. But they did the same after a couple of days & were adamant this time. For which accused no.1&2 had to pelt stones on bikers. Thereafter, the same evening deceased approached Accused no.1&2, addressed them to be anti-nationals and warned them to keep quiet. After this, they browsed about deceased & approached accused no.3 who in a fit of rage unintentionally stated to kill him and further told them to not be intimidated by his scare tactics. Defence further claims that on the date of incident, deceased intervened in the clash between Accused no.1&2 and PW4 & PW5 to aid & support unlawful act of complainant. Deceased slapped Accused no.1 and was just about to shoot accused no.1 when he managed to acquire the iron rod & attacked him. Hence, claim to act in self defence.
9. Ld. Defence Counsel to establish their version examined five witnesses before this Court. **DW1**, Abhishek – accused no.1; **DW2**, Angad – accused no.2; **DW3** – accused no.3; **DW4** Tanya & **DW5** Natasha, friends of Accused no. 1& 2 teased by PW4 & PW5.
10. On hearing submissions of both sides, following questions arises before the court:-

- i) Whether prosecution has established that accused had intentionally killed deceased?
- ii) Whether prosecution has established that accused no.1 & 2 had obstructed Inspector Chaudhary in performance of his public function?
- iii) Whether prosecution has proved that accused no.2 & 3 abetted accused no.1 to commit murder of deceased?

11. Ld. Prosecutor vehemently established essentials of murder through internet browsing history from the personal computer of accused no.1 (Exhibit 4) wherein accused has searched various provisions regarding police action & legal protection under self-defence. Ld. public prosecutor examined PW1 & PW2 emphasizing on post-mortem (Annexure 3) & forensic report (Annexure 4) to prove *actus reas*, relying upon *Rewaram v. State of M.P.*³, establishing that the persons inflicting the injuries are liable for causing death even if death was not direct result of the injuries. Ld. prosecutor infers premeditation through 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 of throwing stones, picking up metal rod hitting it at road and then throwing it on the vital part of deceased. Ld. prosecutor also pointed out that attacking on vital part through metal rod when there were

³ (1978) CriLJ 858.

stones present suggests the intention on the part of accused referring to Shyam Lal v. State of U.P.⁴ & Karu Marik v. State of Bihar.⁵

12. Defence counsel however contends that the accused just acted in self defence and examined DW1, DW2, DW4 & DW5. The accused acted lawfully within his right to private defence available against deceased. Ld. Counsel points out before court section 100 of Indian Penal Code, 1860 which provides that the right extends to causing death if there is reasonable apprehension that death or grievous hurt would be consequence of assault. Sudden intervention of the deceased and thereafter slapping him & showing gun holster by putting his hand on the belt created adequate apprehension of death & grievous hurt in the mind of accused. Accused no.1 just to protect himself hit him with the iron rod. Ld. defence counsel emphasized on Parichhat v. State of M.P.⁶ claiming that when threat is real & immediate, the kind of instrument and the force with which it is used at the spur of moment is not require to be weighed in golden scales,. He also submitted that right to private defence is available against public servant performing unlawful action and even if while acting lawfully creates reasonable apprehension of death or grievous hurt relying upon State of U.P. v. Ram Snehi.⁷

⁴ (1968) 2 SCWR 801.

⁵ (2001) 5 SCC 284.

⁶ (1972) 4 SCC 694.

⁷ (1969) CriLJ 952 (All).

13. Court concludes that there was no absolute motive to threaten complainant & kill deceased. The prosecution allegation that accused no.1 acted so because they were close to ruling party and opposed the political ideology of the accused is very vague and have not been proved by any substantial evidence. Hence the court dismisses this allegation.
14. Also, if accused had any idea to confront deceased on the date of incident or intention to kill deceased he would have brought a weapon with him. But since he attacked with the metal rod lying there on the ground no inference of his malafide intention can be drawn thereof.
15. According to Public Prosecutor, accused no.1 & 2 have voluntarily obstructed deceased from carrying out his legitimate public function. Prosecution examined PW3 and emphasized on the point that deceased (Inspector Chaudhary) warned both the accused not to create public nuisance at the bus stop upon the complaint by PW4 & PW5 few days back on 30th March, 2016 but they both were adamant. He alleged that on the date of incident accused no.1 & 2 obstructed deceased in performance of his public function & even caused death of him when deceased intervened to control the public nuisance under the colour of his official duty as Police official. On this point, Ld. prosecutor presented before court section 23 of The Police Act, 1861 and S.N. Dwivedi v. State of U.P.⁸; S. Satyanarayana v. State of Andhra Pradesh⁹ & Kalpana Pal v. State of West

⁸ 2014 (3) ALJ 106.

⁹ (2000) CriLJ 1297 (AP)

Bengal & Ors.¹⁰ purporting that prevention of public nuisance & crime is one of the foremost duty of an police officer.

16. However, the Ld. defence counsel submitted before this court that no complaint under section 195(1)(a) Cr.P.C. to take cognizance has been made by concerned and thus cognizance taken on the charge sheet is liable to be quashed relying upon Gurinder Singh v. State,¹¹ Basudev v. State¹² & Jiwan Kumar v. State¹³. The Ld. defence counsel further submitted before this court that section 186 only deals with obstructions offered to public servant in discharge of legitimate duties or public function. He contends that deceased was not performing his legitimate duty and was only favouring PW4 & PW5 just for his personal benefits. He points out before this court the cordial relations between deceased and Dinesh family and puts a question why he informally complained to deceased if he was in a position to do so in formal manner. Ld. defence counsel further contends that accused just acted in self defence and did not act voluntarily which is an essential ingredient to constitute an offence under section 186 RPC,1860.

17. The court accepts the submission of defence counsel and finds that this court can not take cognizance of the offence u/s 186 unless requisite

¹⁰ 2011 (3) CHN 460.

¹¹ (1996) 3 CCR 257 (Del).

¹² (1985) CCC 97 (Del).

¹³ 2008 CriLJ 3576 (P&H).

complaint by the officer to whom he was subordinate is not submitted before the court. Hence, this charge fails.

18. That Ld. Public Prosecutor alleged that accused no.2 & 3 intentionally aided & instigated accused no.1 to commit the offence of murder & obstructing public servant in discharge of his public duty. He contended that accused no.3 actively suggested accused no.1 to kill the deceased and motivated them enough to prove their worth to political bosses. In pursuance to which accused no.2 & 3, premeditated to confront deceased after searching about background of PW4, PW5 & deceased establishing it from Ex.4 and examination of PW3. He emphasized on Ramesh Kumar v. State of Chhattisgarh,¹⁴ Sohan Raj Sharma v. State of Haryana,¹⁵ & Re Laxminarayana Aiyar¹⁶ establishing that instigation means to incite & stimulate to do an act by any means of hints or encouragement. Ld. Prosecutor also submits that accused no.2 intentionally aided accused no.1 in his every act from harassing the complainant to the commission of offence at the date of incident. He further points out that the presence at the spot is immaterial for commission of abetment relying upon Noor Mohd v. State of Maharashtra¹⁷ & Parasa Raja M. Rao v. State of A.P.¹⁸

¹⁴ (2001) 9 SCC 618.

¹⁵ (2008) CriLJ 2569.

¹⁶ AIR 1918 Mad 738.

¹⁷ AIR 1971 SC 885.

¹⁸ AIR 2004 SC 132.

19. The defence counsel rebutted the allegation contending that the words uttered by accused no.3 were in a fit of rage and he never intended to instigate accused no.1 to commit any offence. To substantiate, Ld. defence counsel puts forward *Praveen Pradhan v. State of Uttaranchal*¹⁹ where SC has expressly observed that the words uttered in a fit of anger or omission without any intention cannot be termed as instigation. He emphasized that general advice per se cannot necessarily be instigation relying upon *Chitresh Kumar v. State (NCT of Delhi)*,²⁰ *Ramesh Kumar v. State of Chhattisgarh*²¹ & *Kishori Lal v. State of M.P.*²² He further contended that mere proving that the act would not have been committed without the interposition of alleged abettor can not prove abetment relying upon *Rajat Prasad v. CBI*.²³ Ld. defence counsel also pointed out that law only punishes abetment of offence, and not the abetment of mere acts which are not offence and since accused no.1 acted lawfully within his right to private defence, there is no abetment.

20. Hence, on the basis of evidences & submissions by Public Prosecutor & defence counsel, prosecution has failed to discharge their burden & establish the offences beyond reasonable doubt. The sole independent witness of prosecution PW6 depose that he was busy in his work & don't

¹⁹ (2012) CriLJ 4925 (SC).

²⁰ AIR 2010 SC 1446.

²¹ AIR 2001 SC 3837.

²² AIR 2007 SC 2457.

²³ (2014) 6 SCC 495.

remember whole incident exactly. Also, prosecution have failed to produce certificate under section 65B of Rabat Evidence Act, 1872 which is required for admitting electronic records. Electronic records being more susceptible to tampering, alteration, transposition, excision etc. and thus in absence of compliance of safeguard under section 65B cannot be relied upon referring to Anvar v. Basheer²⁴ & Kundan Singh v. State²⁵. Thus, there is no conspicuous proof linking the accused to the crime by prosecution.

21. The prosecution version suffers from serious irregularities & omissions. Prosecution has failed to submit any examination report of murder weapon, fingerprints & blood sample recovered from the murder weapon & stump of the tree vide Panchnama dt.7.04.2016. Prosecution has failed to examine a material eye-witness tea vendor who was also present at the crime scene as per statements of PW4 & PW5. Also, provisions of S.174 Cr.P.C. has not been complied with and no inquest report has been submitted before court to be corroborated with post mortem report. On this point reliance has been made on Datar Singh v. State of Punjab²⁶ wherein apex court established that failure to examine weapon of murder for fingerprints to connect with the accused is extremely fatal to prosecution case.

²⁴ (2014) 10 SCC 473.

²⁵ 2015 SCC OnLine Del 13647.

²⁶ AIR 1974 SC 1193.

22. Hence, the court concludes that prosecution has substantially failed to prove element of *mensrea* and establish that accused were prepared to confront deceased on the date of incident. Reaching the crime scene without any wallet or any other valuable thing but with gun creates serious doubt that deceased approached there not to prevent nuisance or in discharge of his public function authorised by law but to favour PW4 & PW5 on their request. Therefore, since no charge is established beyond reasonable doubt this court cannot make accused responsible for the offences they are charged for. Hence, in my opinion, the following order would meet the ends of justice. Thus, I answer all the questions accordingly and proceed to pass the following order:-

ORDER:-

Accused Abhishek Angad & Dushyant acquitted of all the charges.

Judgement dictated & pronounced in open court.

MAVADA

Date:-11/09/2016

Sd/--

(XYZ)

Addl. Sessions Judge

Mavada.