Judgement Writing Competition – Surana and Surana National Trial Advocacy Moot, North India Rounds, 2016

TAN – 13 (Changed from Team Code-11)

Abhishek (hereinafter referred as "accused") and Angad (hereinafter referred as "co-accused") were childhood friends, Dushyant (hereinafter referred as "co-accused-2") was a local leader, they all were members of Collective Rabat Party ('CPR'). Accused was President and Co-accused was office bearer in College Union. Accused and co-accused and his friends were constantly involved in altercations with students belonging to rival parties, they arranged a protest against arrest of Kidhar Lepat, the leader of CPR, who was charged with Sedition; and in support of Ram a student of B.N. University, who was arrested after he protested against hanging of Safal Rugu (a terrorist), such demonstrations by them lead to closing of the College, they came into bad terms with other students for this. DW-3 and Natasha were their friends; they complained that two boys teased them regularly. Accused, co-accused and co-accused-2 found that boys were Dinesh (hereinafter referred as PW-4) and (Peter hereinafter referred as PW-5), former one being the son of a local MLA from ruling party. The boys threatened accused and co-accused, of some harm, when once they tried to stop them from teasing the girls. Same evening Insp. Chaudhary (hereinafter referred as "deceased") warned them to stop their political activities. They researched about Insp., Private Defence and Police action during riots, etc. They also visited co-accused for advice, who on hearing the incident said *"iski ye himmaat, salley ko mar dalo, kam se kamhamareneta to khushhonge"* and said that the party would support them, come what may. On April 7, 2016, while accused and co-accused along with Tanya(DW-4) and Natasha(DW-4) were standing on the bus stop, the said boys came and said something to girls, after which accused and co-accused started pelting stones at them, this created an affray, to stop this deceased came and grabbed accused, to which co-accused held him in order to prevent him

from doing so, accused escaped and picked up a metal rod and threw it on deceased which hit him on his head, he fell instantly and hit his head on tree stump and died. Accused and co-accused were charged for culpable homicide not amounting to murder. The Court of Sessions, after investigation framed charges against Abhishek, Angad and Dushyant. The charges framed against them are as follows:

I. Mr.AbhishekLepat
   (i) Section 304 r/w Section 34 of the RPC.
   (ii) Section 186 of the RPC.

II. Mr.Angad Lepat
   (i) Section 304 r/w Section 34 of the RPC.
   (ii) Section 107 r/w Section 34 of the RPC.
   (iii) Section 186 of the RPC.

III. Mr.Dushyant Lipo
   (i) Section 107 of the RPC.
   (ii) Section 304 r/w Section 34 of the RPC

The side on behalf of defence took the plea of private defence as contained under section 96 of Rabat Penal Code, it was also contended that charges under section 186, 107 and section 34 are not attracted against the accused, co-accused and co-accused-2.

In the present matter it is wrongfully alleged that the accused has committed culpable homicide not amounting to murder, rather he acted well within his rights of self-defence, granted under. Sec 100 of the RPC and cannot be said to have caused death of Insp. Chaudhary. A person has a right of private defence to protect his body from offences and if in doing so, he himself commits an offence, that offence would be pardoned. Though,

ordinarily, the harm caused in private defence must be proportionate to the threat, just sufficient for averting the risk and nothing more, yet special circumstances have been envisaged in Section 100, wherein the accused is even justified if he causes the *death* while doing so. The necessary ingredients of Section 100 – namely that (a)there was a reasonable apprehension of death and the force used was reasonable. The defence also remarked upon the fact that the standard of proof in private defence is preponderance of probabilities and not beyond reasonable doubt.

Reasonable apprehension comprises of two ingredients- a) There was an apprehension of death; b) Such apprehension was reasonable. *Firstly*, when there is no apprehension of death or grievous hurt, rather *some other injury,* not mentioned in Section 100, then the right to private defense would not exceed to causing death. Therefore it is imperative to prove that there was apprehension of death or atleast grievous hurt. *Secondly*, the apprehension of death must be based on reasonable grounds, i.e., it must be either real or apparent, but not illusory and imaginary. While deciding the question whether the apprehension of the danger was a reasonable one or not, three things must be kept in mind:

1) It is always a *question of fact*, to be determined on the basis of facts and circumstances of that case and there is no straight jacketed formula for it. No test in the abstract for determining such a question can be laid down.
2) In determining this question of fact, the Court must consider all the 'surrounding circumstances' as well as the 'nature and manner of assault'. The word other 'surrounding circumstances' has a wide import and bear a very important role in framing the apprehension in the minds of the accused.

i) It has to be judged from the *subjective point of view of the accused*. In *State of Uttar Pradesh v Niyamat*, the accused villagers had killed the informant and the members of police party while it was making an illegal arrest of a fellow villager. It was shown that

the villagers had gathered only to rescue the arrestee and attack was launched only when the policeman fired three shots in air. The villagers were allowed the plea of self-defence on the basis that though the shots were fired in air and the police intended no harm, yet it was dark and it was difficult to make out where the shots were fired and it could have created a reasonable apprehension of death.

Following factors clearly indicate the state of mind of the accused was such that the apprehension they got was of death:

i. All three witnesses of the defence namely accused, co-accused, DW-4 have unanimously remarked the fact the deceased had attempted to draw out his gun. Had the co-accused-1 not warned and reached to his rescue, the deceased would have successfully drawn out the gun and would have killed the accused. .

ii) When the accused escaped, it is quite evident that the co-accused-1 also escaped. This can be derived from plain logic as the accused could not have risked to throw the metal rod if the co-accused-1 was still involved in the scuffle with the deceased. Now, the deceased who was earlier impeded by the co-accused-1 from taking out his gun, was now free and the accused knew that he would now draw out his gun to shoot him. This created a reasonable apprehension in him that he would be shot. Thus, before the deceased could draw out his gun, the accused hit him with the metal rod.

iii) Apart from the circumstances at the time of transactions, impressions from some previous occasions also warrant the formation of apprehension that the deceased would attempt to kill the accused. The first such occasion which has to be remarked is the brawl between the accused and Dinesh (hereinafter referred as the ‘complainant’) and Peter (hereinafter referred as the ‘PW-5’), that took place on March 30, 2016. DW-4 has testified that they said something like “fatal accidents can happen”. Accused and the co-accused-1, state that they also pointed their hands as guns. It is pertinent to mention that

both have agreed in their statements that by such words and gestures they apprehended that the motorists "threatened to kill us". The apprehension is reasonable because by words and gesture they not only indicated that they would kill them, but also indicated *how* they would kill/get them killed.

iv) The meeting of accused and the co-accused-1 with the deceased, as disclosed in their statements, on March 30th, finding of connection between the deceased and the motorists and the connection of all with the opposition party and finally their meeting with Dushyant (hereinafter referred to as the 'co-accused-2') to discuss the same, all these facts indicate that a reasonable apprehension has been made in their minds that some trap was being laid to kill them.

The police report of investigation under section 173 CrPC,1973 confirms all the above facts and concludes that the accused were 'expecting some confrontation' from the police. Even if the report is to be considered, it vehemently indicates that the state of mind of the accused had become *more prone* to apprehensions even before the time when the assault on them actually took place. Sec. 99 of the RPC says that the force used must be reasonable and proportionate to the threat. The force used (i.e. causing death) was reasonable because Sec. 100 of the RPC itself says that when the apprehension is, *inter alia*, of death or grievous hurt, force can extend to causing death of the aggressor. Sec. 34 of the RPC does not create a substantive offence and is more of rule of evidence.

Common Intention is invoked to make two or more people liable for the criminal act done by them in furtherance of a common intention of all. To establish charge under this section, following element must be proved, beyond reasonable doubt:

a) *There must be a common intention*

b) *An act should be done in furtherance of such common intention.*

To infer common intention the *time and place of the murder, weapons used, their relationship inter se & subsequent conduct all are important*. Angad can't be said to have the common intention as the evidences and arguments presented from the side of Prosecution are not adequate to fulfil the ingredients of Section 34. Coaccused- 2 cannot be charged under Section 34 the reason being that section 34 requires physical participation in the form of any overt and covert act. Herein in the present case there is no overt or covert participation of the co-accused-2.

It is not necessary in law to prove actual words in order to establish instigation. A mere word, without necessary intent to incite a person, uttered in quarrel or in a spur of the moment or in anger doesn't constitute "instigation". A person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means or language direct or indirect, whether it takes the form of express solicitation or of *hints, actions, insinuation or encouragement*. In this case, what act of the co-accused-1 can be called as 'act of instigation' is not clear from the evidences in hand. It is not clear whether or not he said or shouted something before leaping over the deceased.

To prove abetment by conspiracy, there must be a combining together of two or more persons in the conspiracy, and an act, or illegal omission must take place in pursuance of that conspiracy. In the present case, there is no evidence of any pre-mediated plan regarding how to kill the deceased, and as far as search history of the accused is concerned it seems far too vague to establish any nexus between the search done and any act done in furtherance of it.

In order to constitute abetment, the abettor must be shown to have "intentionally" aided to commission of the crime. A person abets by aiding when by the commission of an act he intends to facilitate and does facilitate the commission thereof. In the present case, no as such act was done by the co-accused-1 wherein it can be established that he aided the commission

of the crime, rather everything whatever they did was done in exercise of their private defence. Moreover, while PW-6 remarks that both the accused and the co-accused-were struggling with the deceased before the accused attacked with the metal rod, the complainant has not even mentioned about the involvement of the co-accused-1 in the whole transaction.

A bare reading of section 107 of IPC makes it clear that a mere instigation is not necessary to hold someone guilty of abetment, rather the intention should be there, which should be in concurrence with the *actus reus*. A mere word, without necessary intent to incite a person, uttered in a spur of the moment or in anger doesn't constitute "instigation". When the accused and the co-accused-1 narrated the whole incident about the warning given by the deceased to them, to the co-accused-2, he in **fit of rage** said that *"Maar do saale ko kam se kam hamare neta to khushhonge".*Co-accused-2 said all these as a general advise and a general advise is far too vague an expression to prove abetment.

The requirements of section 186 of RPC are that (a) there must be an obstruction in course of doing a public function and (b) such obstruction must be voluntary. As per section 22 of Police Act, 1860 a police officer is always on duty. In the Forensic report and Post Mortem report it was found that the deceased was heavily intoxicated at the time of his death, which leads the court to an inference that he cannot be said to do his public duty. Being a public servant doesn't give someone a license to do unlawful act on the garb of him being a Police officer. Further the actions of accused and co-accused were done in exercise of private defence wherein they had a reasonable apprehension that the deceased would kill them, so the provisions of Section 99 as contended by the prosecution is not appropriate.

Considering the abovementioned facts and evidences, the court comes to this conclusion that the accused did not exceed his right to private defence and his act was justified as there was

reasonable apprehension. The charges against co-accused and co-accused-2 are not made as the prosecution failed to prove their case beyond reasonable doubt.

Wherefore, in the light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to acquit Mr. Abhishek Lepat for the offence of Culpable Homicide not amounting to murder under Section 304 of the Rabat Penal Code, 1860 and Obstructing Public Servant in discharge of Public function under Section 186 of the Rabat Penal Code, 1860. The court acquits Mr. Angad Lepat for the offence of Culpable Homicide not amounting to murder under Section 304 r/w Section 34 of the Rabat Penal Code; Abetment under Section 107 of the Rabat Penal Code, 1860 and Obstructing Public Servant in discharge of Public function under Section 186 of the Rabat Penal Code, 1860. The court acquits Mr. Dushyant Lipo for the offence of Abetment under Section 107 of the Rabat Penal Code.