



IN THE COURT OF SESSIONS

MAVADA, JAGUTAR, UNION OF RABAT

S.C. CASE No. 101 OF 2016

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

IN THE MATTER OF

STATE OF JAGUTAR.....PROSECUTION

VERSUS

ABHISHEK LEPATACCUSED NO. 1

ANGAD LEPAT.....ACCUSED NO. 2

DUSHYANT LIKO.....ACCUSED NO. 3

-MEMORIAL ON BEHALF OF THE DEFENCE-

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STATEMENT OF JURISDICTION

The Defence, 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 4,¹ 6,² 26,³ 177,⁴ 184,⁵ and 223⁶ of the Code of Criminal Procedure, 1973. It is further submitted that all procedural requirements have been adhered to in the prescribed manner.

¹ Trial of offences under the Indian Penal Code and other laws, Section 4, Criminal Procedure Code, 1973 [“CrPC”].

² Classes of Criminal Courts, Section 6, CrPC.

³ Courts by which offences are Triable, Section 26, CrPC.

⁴ Ordinary place of Inquiry and Trial, Section 177, CrPC.

⁵ Place of Trial for offences Triable together, Section 184, CrPC.

⁶ What Persons may be charged Jointly, Section 223, CrPC.

STATEMENT OF FACTS

-BACKGROUND-

Abhishek (“A1”) and Angad (“A2”) belong to the Lepat Community (“Community”), which is recognised as comprising of hardworking and industrious individuals. A1 has been elected as the President of the College Union and actively organises various protests. Tanya (“DW4”) and Natasha (“DW5”) are also members of the Union and are close to A1 and A2.

-CIRCUMSTANCES LEADING TO THE DEATH OF THE DECEASED-

One evening, when all four of them were at the bus stop, Dinesh (“PW4”) and Peter (“PW5”) (“the Bikers” collectively) came riding on a bike and began teasing the girls. They left only when the people around joined A1 and A2 in getting rid of them.

March 30, 2016: The incident repeated itself, but this time, a police officer, Amit Chaudhary (“Deceased”), who had political motivation to cause harm to the Accused, approached A1 and A2 and threatened them, asking them to stay away from the bikers. A1 went to discuss this matter with his friend Dushyant (“A3”).

April 7, 2016: The Bikers came again and began teasing the girls. While A1 and A2 were trying to drive the Bikers away, the Deceased caught A1 by surprise and placed his hand over the belt showing the gun holster. Threatened by the Deceased, A1 ran and took a rod lying in the auto garage next to the bus stop and threw it at the Deceased. The Deceased got hit on the head and fell on the pavement.

STATEMENT OF CHARGES

I. Abhishek Lepat, Angad Lepat and Dushyant 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 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 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 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 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 RPC?
 - II. Whether A2 and A3 are liable under Section 107 of the Rabat Penal Code?
 - III. Whether A1 and A2 can be held liable for obstructing a public servant from discharging his official functions?
 - IV. Whether the Accused can be tried and convicted under Section 304A or Section 120B of the Rabat Penal Code?

SUMMARY OF ARGUMENTS

I. The Accused are not liable under Section 304 read with Section 34 of the RPC.

Indictment under Section 304 requires not merely causing death, but causing death with the intention or knowledge of doing so. In the present case, there was no premeditation and A1 acted in a hurry, and threw whatever he could find in the middle of the commotion caused by the Bikers and the Deceased. It is also recognized that a metal rod is a commonplace object, which is not inherently dangerous. Further, the Deceased died due to a condition caused by alcoholism, which results in intracranial haemorrhage at an early age. A1 cannot be attributed with knowledge of such special conditions. Additionally, there was no common intention between the three accused to cause bodily injury likely to cause death. This is because A1 and A2 acted in self-defence. Lastly, it cannot be said that the act was premeditated as the events happened in the spur of the moment. Therefore, A2 and A3 cannot be held liable under Section 304, read with Section 34.

II. A2 and A3 are not liable for abetment under Section 107 of the RPC.

A1 and A2 went to A3 to merely discuss about the inappropriate conduct of the Bikers and the Deceased. A3 knew about the Deceased's evil character and in a fit of rage told A1 to kill him. Such a statement made in rage does not amount to instigation. Later, A1 and A3 browsed the provisions relating to self-defence because of the incidents that had taken place. They were apprehensive about the behaviour of the inspector and merely wanted to remain safe. The entire incident took place so suddenly, that it can in no way be assumed to be a planned one. Neither A2 nor A3 abetted A1 through any of the three conditions - instigation, conspiracy or aid.

III. A1 and A2 are not 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 function. The accused cannot be charged under this Section as the Deceased was not discharging his official duties, but instead, was personally and politically motivated to cause harm to the accused. Moreover, the obstruction wasn't voluntary as A1 was only trying to escape from the Deceased who was threatening him with a gun. There was no common intention between A1 and A2 to commit the offence as it wasn't premeditated. Therefore A2 cannot be charged under this Section for common intention.

IV. Alternatively, the Accused cannot be liable under Section 304A or Section 120B of the RPC.

In any event, the Prosecution cannot hold the Accused liable under Sections 304A or 120B without charging them with the same. The Accused would not be given sufficient time to prepare a defence. As a result, there would be a prejudice created against the Accused occasioning a failure of justice.

ARGUMENTS ADVANCED

I. THE ACCUSED ARE NOT LIABLE UNDER SECTION 304 READ WITH SECTION 34 OF THE RABAT PENAL CODE.

A. Elements of the Offence

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

B. There was no intention to cause death or bodily injury likely to cause death.

Intention connotes a conscious state in which mental faculties are roused into activity and directed towards a specific end.⁹ Merely on the basis of motive, no inference can be drawn about the intention of the Accused.¹⁰

Section 304, Part I requires such intention to cause bodily injury likely to cause death. The factors to determine intention are, *inter alia*, the degree of force released in wielding the weapon; the antecedent relations of the parties;¹¹ whether the act was pre-meditated; the nature of weapon used; and the manner of assault on the accused.¹²

B.1. The act was not premeditated.

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

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

⁹ *Jai Prakash v. State of (Delhi Administration)*, (1991) 2 SCC 32.

¹⁰ *Shankar Kondiba Gore v. State of Maharashtra*, 1995 Cri LJ 93; *Ramchandra Rao v. State of Bihar*, 2000 (10) SCC 467.

¹¹ *Virsa Singh v. State of Punjab*, AIR 1958 SC 465.

¹² *Illathody Beeravan v. State of Kerela*, 14th July, 2016, Supreme Court; *Basivetti Kameswara Rao v. State of Andhra Pradesh*, Appeal (Crl.) 547 of 2008.

On the day of the incident, the Bikers had come to the bus stop and were teasing DW4 and DW5.¹³ A1 and A2 tried to drive them away.¹⁴ However, in the middle of such chaos, the Deceased came from behind and grabbed A1 by the neck.¹⁵ A1 was reasonably alarmed by this as the Deceased had already threatened A1 and A2 on a previous occasion with dire consequences since they were perceived as anti-nationals. A1 desperately struggled to escape his grip during which time the Deceased simultaneously moved his hand to the holster containing his gun, in an attempt to use the weapon. Terrified, A1 somehow managed escape, and in the middle of chaos and commotion, picked up the first thing that he could lay his hand on- a metal rod, and threw it in the direction of the Deceased to stall him from chasing A1 further. A1 never aimed for the head but simply threw it against the direction that he was running, never realizing the nature or effect of his actions. Therefore, the act was not pre-meditated.

B.2. The nature of the weapon and manner of attack does not show intention.

Where the Accused merely swung the weapon towards the Deceased, and as a result of sheer misfortune, happened to fracture his skull, it was held that there was no intention.¹⁶ In the present case, the weapon used was an iron rod, which, as held in the case of *Surajeet Sarkar*,¹⁷ is not a weapon so inherently dangerous that it can cause death, even when used for hitting someone on the head. Further, the rod was not *aimed* towards the head of the Deceased, it was merely tossed to stop him from chasing A1.¹⁸

¹³ Annexure 5, Proposition.

¹⁴ Annexure 6, Proposition.

¹⁵ Statements of Abhishek and Angad, Annexure 5, Proposition; Annexure 1, Proposition.

¹⁶ *Jaspal Singh v. State of Punjab*, (1986) 2 SCC 100.

¹⁷ *Surajit Sarkar v. State of West Bengal*, (2013) 2 SCC 146.

¹⁸ Statement of Abhishek, Annexure 5, Proposition.

C. There was no knowledge that the act was likely to cause death.

C.1. The Accused could not be certain that his act was likely to cause death.

It is well-established that knowledge imports certainty and not just probability.¹⁹ In the present case, A1 could not be certain of such act being likely to cause death. Where the Accused beat up people with iron rods, it was held that the weapon used i.e. the iron rod, was a commonplace object not comparable to a knife or a gun in terms of hazard and hence not as deadly.²⁰

C.2. The Accused had no knowledge of the specific condition of the Deceased.

In cases where death is attributed to an injury which the offender did not know would be likely result in death and in normal circumstances would not cause death, the offence will not be culpable homicide but grievous or simple hurt. Every such case depends on existence of abnormal conditions unknown to the Accused.²¹

It is accepted in the scientific community that greater susceptibility to intracranial haemorrhage at ages before 60 or 70 is observed in people having higher levels of alcohol.²² The intracranial haemorrhage suffered by the Deceased was not merely because of the force by the metal rod. Such force became fatal at his age of 45, only because of the increased risk of the Deceased due to his alcoholism.²³ This specific condition was unknown to A1.

Therefore, A1 could not have knowledge that an act which is not fatal in normal circumstances, could lead to an injury causing death, in this specific case.

¹⁹ *Gahbar Pande v. Emperor* on 8 November, 1927 cited in THOMAS K.T. & RASHID, M.A., RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE (Lexis Nexis, 2014) [“**Ratanlal (2014)**”] 494.

²⁰ *Vinod Kumar v. Govt of NCT Delhi*, 30 May, 2016, Delhi High Court.

²¹ *Bai Jiba*, (1967) 19 Bom LR 823 in CHANDRACHUD, Y.V. & MANOHAR V.R., RATANLAL & DHIRAJLAL THE INDIAN PENAL CODE (LexisNexis, 2007) [“**Ratanlal (2007)**”] 427.

²² US National Library of Medicine, *Heavy Alcohol Intake and Intra-cerebral Haemorrhage: Characteristics and Effect on Outcome*, 11 September, 2012, Accessed at < <http://www.ncbi.nlm.nih.gov/pubmed/22965674>>.

²³ Annexure 4, Proposition.

D. The general exceptions under Section 81 and 100 are applicable.

D.1. Exception under Section 81:

D.1.1. Essentials

An act which is done in good faith and without any criminal intention, for the purpose of preventing harm to body is not an offence merely on the pretext that there is knowledge that the act is likely to cause harm.²⁴

D.1.2 The Accused acted in order to avoid harm to himself.

As will be elaborated subsequently, the course of action undertaken by Deceased was exclusively in the nature of self-defence, spontaneous and lacking criminal intention. To avoid being recaptured or gunned down, A1 had no other option but to instinctively throw something in the Deceased's way to stall him and protect his own life.

D.2. Exception under Section 100:

D.2.1 Essentials

The right to private defence is a general exception whereby an offence is justified and homicide is classified as lawful.²⁵

Section 97, first read with Section 100 allows the exercise of right to private defence if there is an assault which may reasonably cause the apprehension that death or grievous hurt,²⁶ which is real or immediate.

The right of private defence has three elements [a] no more harm is inflicted than is necessary for the purpose of defence; [b] there must be reasonable apprehension of danger to the body

²⁴ *O'Brien*, (1880) 2 All 766; *Indu Beg*, (1881) 3 All 776.

²⁵ *Ratanlal (2014)*, at 490.

²⁶ Section 100, RPC.

from the attempt or threat to cause death or grievous hurt; and [c] the right does not commence until there is a reasonable apprehension.²⁷

In order to establish this right, the imminence of threat to his safety, the injuries caused by the Accused are all relevant factors to be considered.²⁸

D.2.2 There is a preponderance of probabilities that the Accused acted in private defence.

The standard of proof for a claim of private defence can be sufficiently met by preponderance of probabilities.²⁹ This requires the Court only to examine the probabilities in anticipating the plea, which is a much lower burden than the Prosecution.³⁰ Hence, in the present case the Defence would further arguments to show that the act was done in exercise of right to private defence.

D.2.3 The immediate events created a reasonable apprehension that the Deceased would cause death of the Accused.

As per the Forensic Report, the Deceased had high levels of alcohol and toxins in his blood, and he grabbed A1 closely by the neck.³¹ Since he was intoxicated³², he was not in control of his senses and was more inclined to take rash decisions. Subsequently, when the Deceased reached for his gun, he explicitly threatened that the same was to teach a lesson to A1 and A2, making both of them to fear for A1's life.³³

²⁷ *Manjeet Singh v. State of Himachal Pradesh*, 2014 (5) SCC 697.

²⁸ *V. Subramani & Anr. v. State of Tamil Nadu*, 2005 CriLJ 1727.

²⁹ *Dharminder v. State of H.P.*, AIR 202 SC 3097.

³⁰ Section 107, Indian Evidence Act, 1872; *Id.*

³¹ Annexure 3, Proposition.

³² Annexure 4, Proposition.

³³ Statements of Abhishek and Angad, Annexure 5, Proposition.

The Deceased's built, his grip around A1's neck and his attempt to pull out his gun from the holster *while* threatening A1 and A2 altogether caused a reasonable apprehension of death or grievous hurt. Thereupon, A1 did whatever he could to protect himself from a reasonable apprehension of threat to life or grievous hurt.

D.2.4 The antecedent relations lead to a reasonable apprehension of grievous hurt.

The Report of the Investigation Officer clearly states that the Deceased was already known to the Bikers, and they had complained to him before.³⁴ He had also been involved in encounter killings and was close to the ruling party.³⁵ He had even threatened A1 and A2 with dire consequences for confronting the Bikers, and being anti-nationals.

D.3. The injury caused was commensurate to the damage.

It is unrealistic to expect a person under assault to modulate his defence in exactitude to determine the precise amount of force necessary to keep within the right.³⁶ A1 merely threw the rod at the Deceased, without consciously aiming for the head. Further, the Auto Repair Shop was right next to the tree stump where the Deceased was standing. Hence, the distance between them was not far enough for the rod to move at a high speed and cause much damage. Thus, there is a preponderance of probabilities to show that the Accused rightly exercised his right to private defence.

E. The accused did not share common intention.

E.1. Elements of the offence

There are two main ingredients to Section 34 of the IPC, [a] a criminal act must be done by several persons and, [b] the criminal act must be done to further the common intention of all

³⁴ Annexure 6, Proposition.

³⁵ Statements of Abhishek and Angad, Annexure 5, Proposition.

³⁶ *Yogendra Morarji v. State of Gujarat*, AIR 1980 SC 660.

and then as a consequence, each of the persons is liable for the act done and the liability of each such person would be in the same manner as if it were done by him alone.

Before any accused can be convicted of an offence read with this section, the Court must arrive at a finding as to which of the accused took part, if any, in furtherance of the common intention.³⁷ Prior concert or prior plan of the accused has to be judged from the facts and circumstances of the case as the direct evidence in respect thereof is difficult to give.³⁸

E.2. A1 and A2 acted in self-defence as they were concerned for their and the girls' safety.

It has been held that when all accused persons appear to be liable for committing the murder of a person by doing an act in furtherance of common intention, they would not be liable for the said act or acts if they had acted in exercise of their right of private defence.³⁹

A1 and A2 were actively involved in college politics and fought for the rights of their Community. This led to a few untoward incidents, making them targets for likes of the Deceased. The Bikers who were involved in the scuffle with the accused used to harass DW4 and Natasha DW5.⁴⁰

On March 30th, the accused were threatened by the Bikers who called them anti-nationals.⁴¹ The Bikers made gestures by showing their hands as guns.⁴² A1 and A2 got to know that the Bikers and the deceased were affiliated to the opposite political party. Moreover, the Deceased had allegedly been involved in fake encounter killings.⁴³ Due to these events A1

³⁷ *Ratanlal (2007)*, at 139.

³⁸ *Kripal v. State of UP*, AIR 1954 SC 706.

³⁹ *Shyam Singh v. State of UP*, 1992 CrLJ 1632 (All).

⁴⁰ Statements of Tanya and Natasha, Annexure 5, Proposition.

⁴¹ Statements of Abhishek and Angad, Annexure 5, Proposition.

⁴² Statements of Tanya and Natasha, Annexure 5, Proposition.

⁴³ Statements of Abhishek and Angad, Annexure 5, Proposition.

and A2 were advised by A3 to defend themselves.⁴⁴ The accused were concerned for their own and the girls' security.

E.3. Common intention implies pre-meditation and there was none.

Common intention within the meaning of Section 34 implies a prearranged plan in pursuance of which the criminal act is committed. A conviction can be meted out if the said person had prior concert with one or more persons for committing the offence.⁴⁵

To constitute common intention, it is necessary that the intention of each one of them was known to the rest and was shared by them. Wherein the petitioner accompanied the principal accused to the complainant's shop to recover money without any intention of causing injury but upon disagreement the accused gave him a knife blow, a common intention could not be established.⁴⁶

It has been proved that the act was not premeditated. The situation the accused were in could not have been anticipated. This can also be inferred from the call records between them and the statements from various witnesses wherein it is clear that the news of the Inspector's death was shocking to A1 and he explicitly mentions that he hadn't intended for such consequences.⁴⁷

When the evidence of the eyewitnesses and the medical evidence show that the accused have not exceeded their right of private defence in inflicting such injury from which common intention to murder or culpable homicide may be inferred against the accused, the conviction is not sustainable under Section 304 read with Section 34.⁴⁸

⁴⁴ Statements of Dushyant, Annexure 5, Proposition.

⁴⁵ *Krishna Govinda Patil v. State of Maharashtra*, AIR 1963 SC 1413.

⁴⁶ *Vikram Malik v. State*, 2005 CrLJ NOC 193 (Del).

⁴⁷ Exhibit 5, Proposition.

⁴⁸ *Dhan Singh Nath v. State of Assam*, 1978 CrLJ NOC 10 (Gau).

E.4. Dushyant is not liable to be charged under Section 34 as he was not physically present at the scene of occurrence.

In the case of *Shiv Prasad*,⁴⁹ it was held that in offences involving physical violence, the presence of the offenders at the scene of offence is necessary to render them liable on the principle of joint liability may be necessary.

Even if it is made out that A1 and A2 harboured a common intention to hurt the Deceased, A3 not being physically present at the scene cannot attract the liability under Section 34.

F. The Prosecution has failed to discharge its burden.

The burden on the Prosecution is to prove its case beyond reasonable doubt.⁵⁰ In the present case, there are various discrepancies in the evidence and witnesses presented.

The Bikers have hidden their previous relationship with the Deceased in the FIR. They have also falsely alleged that A1 and A2 disliked them just because they used to frequent the tea stall near College, despite their being witnesses, who could testify to the contrary.⁵¹ Moreover, the Medical Reports are not based on a complete analysis of the evidence taken from the crime scene and are hence questionable as evidence.⁵²

Therefore, the evidence brought by the Prosecution is questionable and in no way can prove their charges beyond reasonable doubt.

II. A2 AND A3 ARE NOT LIABLE UNDER SECTION 107 OF THE RABAT PENAL CODE.

A. Elements of the Offence

Liability for abetment arises in three cases: [a] there is proof of instigating a person to commit an offence; or [b] engaging in conspiracy to commit it; or [c] intentionally aiding a

⁴⁹ *Shiv Prasad Chunilal Jain v. The State of Maharashtra*, 1964 SCR (6) 920.

⁵⁰ *Sunil Mahadev Jadhav v. The State Of Maharashtra*, 2013 (14) SCALE 177.

⁵¹ ¶ 7, Proposition.

⁵² Annexures 3, 4, Proposition; *Bhagwati Prasad v. State of MP*, (2010) 1 SCC 697.

person to commit it. A person's conduct can be deemed as abetment if it falls within the ambit of any of the three elements of Section 107.⁵³

For holding a person liable under Section 107, it is not only necessary to prove that the person has taken parts in some steps of the transactions but also that he has been connected with those steps of the transactions which are criminal.⁵⁴

A.1. A2 and A3 did not abet A1 to murder the deceased.

In order to hold a person guilty of abetment, it must be established that he [a] had done something which amounted to instigating another to do a thing,⁵⁵ or [b] had engaged in a conspiracy in pursuance of which the offence is committed,⁵⁶ or [c] had aided in the commission of the offence.

A.2. Words said in a fit of rage cannot be termed as instigation.

A mere acquiescence or permission does not amount to instigation.⁵⁷ A1 went to A3 to discuss about the inappropriate conduct of the Bikers and the Deceased. Having known about the Deceased's character and his tendency to bully people into submission, A3 as a political leader told A1 to stand up for himself⁵⁸ which was well within his right to do so and the same cannot be stretched to be termed as encouragement or instigation to act criminally.

Further, words uttered in a fit of anger or omission without any intention cannot be termed as instigation.⁵⁹ A3 only ranted in anger and did not expect A1 to kill the Deceased. The

⁵³ *Ratanlal (2014)*, at 212.

⁵⁴ *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

⁵⁵ *Rajib Neog v. State of Assam*, 2011 Cr LJ 399 (Gau).

⁵⁶ *Kalil Munda & Ors. v. King Emperor*, (1901) ILR 28 Cal 797.

⁵⁷ *Darbar Singh v. State of Chattisgarh*, 2013 CrLJ 1612 (Chh).

⁵⁸ Statement of Dushyant, Annexure 5, Proposition.

⁵⁹ *Sonti Rama Krishna v. Shonti Shanti Sree*, AIR 2009 SC 923.

conversation on the phone⁶⁰ discloses that A3 never intended for A1 to kill the Deceased. The words spoken were said so in a fit of rage as he told A1 to simply stand up for himself.

B. There was no meeting of minds.

Conspiracy consists in the agreement of two or more persons to do an unlawful act or to do a lawful act by unlawful means.⁶¹ There must be a meeting of minds or agreement between the persons involved to constitute conspiracy and mere knowledge or discussion cannot make persons liable for conspiracy.⁶² Evidence to prove the intent of the Accused can be either direct or circumstantial;⁶³ however, such evidence must prove the charge beyond any reasonable doubt to convict the Accused.⁶⁴

B.1. Browsing provisions relating to legal protection under self-defence does not amount to conspiracy.

Every citizen should be in a position to defend himself and subsequently, has the right to know the legal provisions safeguarding his right to defence. 'Right to know' is guaranteed under Article 21 of the Constitution and it is a necessary ingredient of participatory democracy.⁶⁵ In light of the present situation, it is even more understandable considering the recent confrontations that they had had with the Bikers as well as the Deceased. Therefore, A2 cannot be held liable for conspiracy just for browsing provisions regarding legal protection under self-defence because it is not an illegal act or act by illegal means.

B.2. No prior plan between A1 and A2 to hit the Deceased with the iron rod.

⁶⁰ Exhibit 5, Proposition.

⁶¹ Section 120, RPC; *Ratanlal (2014)*, at 216.

⁶² *Sudhir Shantilal Mehta v. CBI*, (2009) 8 SCC 1.

⁶³ *State (Delhi Administration) v. V.C Shukla*, AIR 1980 SC 1382.

⁶⁴ RATANLAL & DHIRAJLAL, THE INDIAN EVIDENCE ACT (Lexis Nexis, 2010) 171.

⁶⁵ *R.P. Ltd v. Indian Express Newspaper*, AIR 1989 SC 190.

It is submitted that there was no agreement or design between A1 and A2 to kill the deceased with a rod. Everything happened in the spur of the moment in a riotous situation filled with confusion⁶⁶. In fact, the deceased himself caught A1 by surprise and grabbed hold of A1, in response to which A2 instinctively asked A1 to quickly escape. This cannot in any manner be interpreted as a direction or encouragement by A2 that could lead A1 to throw the metal rod at the deceased. In absence of any stimulation or suggestion from A1 that may amount to abetment, he cannot be held liable for the same.

B.3. The death of the deceased was not intended.

The incident took place suddenly and was not planned. The statement given by DW5⁶⁷ shows that the incident took place so suddenly that it was impossible to understand what precisely happened. The conversation between A2 and A1 immediately after the incident proves that the death of the Deceased was unexpected and there was no prior intention to kill him.⁶⁸ Therefore, there was no intention on the part of A2 to kill the deceased.

C. A2 did not aid A1 in killing the Deceased.

The use of the term ‘intentionally aids’ in Section 107 shows that active complicity is the gist of the offence of abetment.⁶⁹ In the present matter, A2 cannot be said to have known of the events transpiring in such a manner, much less about the reaction that A1 would provide. He could have intentionally aided A1 only if he had the intention of hurting the deceased, which in the first place is missing, as proven before.

Therefore, neither A2 nor A3 abetted the A1 through any of the three conditions of instigation, conspiracy or aid.

⁶⁶ Statements of Natasha and Tanya, Annexure 5, Proposition.

⁶⁷ Annexure 5, Proposition.

⁶⁸ Exhibit 5, Proposition.

⁶⁹ *Shri Ram v. State of UP*, AIR 1975 SC 175.

III.A1 AND A2 ARE NOT GUILTY OF OBSTRUCTING A PUBLIC SERVANT DISCHARGING OFFICIAL FUNCTIONS.

A. Elements of the offence

To constitute an offence under Section 186, IPC, the following ingredients must be present: [a] there must be an obstruction; [b] the obstruction must be caused by the accused; [c] the obstruction must be voluntary; [d] the obstruction must be that of a public servant; [e] the obstruction must be in discharge of his public functions.⁷⁰

The word ‘obstruction’ connotes some overt act in the nature of violence or show of violence.⁷¹ As to the need of some overt act to constitute voluntary obstruction, there must be an overt act of resistance or obstruction that justifies a conviction under Section 186.⁷²

B. The deceased was not discharging his official duties.

Section 186 provides for voluntarily obstructing a public servant in discharge of his duties. The mere fact of a public servant believing that he was acting in the discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.⁷³

The deceased was politically and personally motivated. He had already accosted the accused because of their activities in the political college. He was also close to the rival political party. He was targeting the Accused instead of acting in his capacity as a police officer. The deceased should have instead warded off the Bikers who were teasing DW4 and DW5.

C. The obstruction was not voluntary.

In the present case, all A1 did was to escape from the Deceased⁷⁴ who was in possession of a gun that he was about to fire in a drunken state.⁷⁵ A1 threw the first thing that came into his

⁷⁰ *Udayanath Barik v. State of Orissa*, 1989 CrLJ 2216 (Ori).

⁷¹ *Phudki v. State*, AIR 1955 All 104.

⁷² *Ratanlal (2007)*, at 847.

⁷³ *Lilla Singh v. Emperor*, (1894) 22 Cal 286.

hand towards the deceased's direction. This was an involuntary reaction to the actions of the deceased when he was about to pull out his gun ostensibly to shoot at A1.⁷⁶

D. In any case, the right of private defence precludes criminal liability under Section 186.

In the case of *Pagla Baba*,⁷⁷ there was a march by the police party with loaded rifles, loaded revolvers in hand and lathis in horizontal position. It was held that private defence precluded the accused from criminal responsibility under section 186 as the accused reasonably apprehended harm.

Similarly, in the present case even if the obstruction is construed to be a voluntary one, the right of private defence of the accused would preclude all liability. It has been proved that the accused were acting in self-defence.

E. There was no common intention between Abhishek and Angad to obstruct the Deceased from discharging his public function.

In the present case, Abhishek threw the metal rod at Chaudhary in self-defence as has already been proved. Even if Abhishek is held liable under Section 186, given that his reaction was spur of the moment, there can be no common intention between them to commit the offence.

It is evident from the call records that the accused did not intend to do any of the acts they are charged with. They were acting in self-defence. A1 threw the first thing which came into his hand. A2 merely asked him to run. This shows that there was no common design or a pre-conceived plan to execute the act and consequently no common intention to commit the offence under Section 186.

⁷⁴ Statements of Abhishek and Angad, Annexure 5, Proposition.

⁷⁵ Annexure 4, Proposition.

⁷⁶ Statements of Tanya and Natasha, Annexure 5, Proposition.

⁷⁷ *Pagla Baba v. The State*, AIR 1957 Ori 130.

IV. ALTERNATIVELY, THE ACCUSED CANNOT BE TRIED AND CONVICTED UNDER SECTION 304A OR SECTION 120B OF THE RPC.

A. Section 304A is not a minor offence with respect to culpable homicide.

The ingredients of death due to negligence and culpable homicide are completely exclusive of each other⁷⁸ in that one is caused due to rash negligence and other is caused intentionally. Thus, the particulars of Section 304A would not be implicit in the charge of Section 304.⁷⁹ Both cannot be committed from the same set of facts proved.⁸⁰ Hence, it is submitted that Sections 304A is not a minor offence and the Accused cannot be prosecuted under the Section without being charged.

B. Addition of charges and prosecution under Section 304A or 120B would prejudice the Accused in his defence.

The Accused can be tried for offences for which he was not charged only if it does not cause him any prejudice.⁸¹ The charges are framed because the Accused is entitled to know with accuracy and certainty the exact nature of charges against him so that he can build his defence in respect of that charge.⁸² In the present matter, the Accused having been charged for Sections 304 and 107 and any alteration would occasion a failure of justice. Therefore, the Accused cannot be tried under Section 304A or 120B.

⁷⁸ *Chandra Pal Singh Chaudhary v. Vijit Singh*, 2009 CriLJ 3456.

⁷⁹ *Vijayan v. State of Kerala*, Cri. Appl. No. 330 of 1990.

⁸⁰ *Salinder Singh v. State of Punjab*, 2008 CriLJ 602.

⁸¹ *Gurbachan Singh v. State of Punjab*, AIR 1957 SC 623.

⁸² *State of Himachal Pradesh v. Geeta Ram* (2000) 7 SCC 452.

PRAAYER FOR RELIEF

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

Place: Jagutar, Rabat