

**SURANA & SURANA NATIONAL TRIAL ADVOCACY
MOOT COURT COMPETITION, 2016**



**BEFORE THE COURT OF SESSIONS
AT MAVADA, JAGUTAR**

S.C. No. 101 of 2016

STATE OF JAGUTR

PROSECUTION

V.

**ABHISHEK LEPAT
ANGAD LEPAT
DUSHYANT LIKO**

DEFENCE

**FOR OFFENCES CHARGED UNDER
SECTION 304 r/w 34, 186 AND 107 OF RABAT PENAL CODE, 1860**

MEMORANDUM ON BEHALF OF THE PROSECUTION

--STATE OF JAGUTAR—

COUNSEL FOR THE PROSECUTION

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SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT, 2016**LIST OF ABBREVIATIONS**

AIR	All India Reporter
Hon'ble	Honourable
Sec.	Section
SC	Supreme Court
u/s.	Under Section
SCC	Supreme Court Cases
RPC	Rabat Penal Code
CrLJ	Criminal Law Journal
U.P	Uttar Pradesh
Alld	Allahabad
Pat	Patna
MP	Madhya Pradesh
AP	Andhra Pradesh

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Raj	Rajasthan
GLR	Gujarat Law Review
Edn	Edition
SCR	Supreme Court Ruling
Ori	Orissa
Mad	Madras
P&H	Punjab & Haryana
Gau	Gauhati
Ka	Karnataka
CrPC	Criminal Procedure Code
CBI	Central Bureau Investigation
LR	Law Reporter
WB	West Bengal
Govt.	Government
Guj	Gujarat

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3. CODE OF CRIMINAL PROCEDURE, 1973

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STATEMENT OF JURISDICTION

The Prosecution invokes the jurisdiction of this Hon'ble Court U/s. 177 read with s. 209 of the *Code of Criminal Procedure 1973*.

Section 177. Ordinary place of inquiry and trial. - *“Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed”.*

Read with

Section 209. Commitment of case to Court of Session when offence is triable exclusively by it.- *“When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-*

- a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provision of this code relating to bail, remand the accused to custody until such commitment has been made;*
- b) subject to the provisions of this code relating to bail, remand the accused to custody during, and until the conclusion of, the trial;*
- c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;*
- d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”*

All of which is respectfully submitted

STATEMENT OF FACTS**A. BACKGROUND**

1. Abhishek, Angad, Tanya and Natasha studies in Presidency College in Mavada.
2. In October 2015 and March 2015 Abhishek led the protest against arrest of Kidhar Lepat, and organized a rally against the arrest of Ram, urging the government to remove sedition from Rabat Penal Code.

B. CHAIN OF EVENTS THAT LED TO COMMISSION OF CRIME

3. On March 30, 2016, Abhishek and Angad pelted stones at Dinesh and Peter. When they commented on them, Angad said, "*let's see who causes accidents*".
4. Abhishek and Angad dug up details on Dinesh, Peter and Amit Choudhary, who on an earlier occasion had reprimanded them and discussed it with his friend Dushyant who, in a fit of rage said, "*sale ko mar dalo, kam se kam hamare neta to khush honge*".
5. Later, Abhishek and Angad researched details on various police action during riots as well as details on legal protection under self defence.
6. On April 7, 2016, Abhishek and Angad pelted stone on boys and they ran away in panic. Suddenly, Amit Choudhary came and slapped Abhishek. Abhishek in a fit of rage takes a rod lying in auto garage and throws it at inspector, who got hit in head and fell on the pavement and again got hit on head by the stump of tree and later died on the way to the hospital.

C. EPILOGUE

7. The police after investigation submitted the Final Report to the Magistrate on 14.04.2016. After cognizance, the magistrate committed the case to Court of Sessions in Mavada.

STATEMENT OF CHARGES**BEFORE THE HON'BLE COURT OF SESSIONS, MAVADA****State of Jagutar**

v.

Mr. Abhishek Lepat and Anothers

S.C. No. 101 of 2016

After complying with the statutory requirements under Section 184 read with Section 220 and 223 of Code of Criminal Procedure, 1973, the Court of Sessions framed charges against the accused under the Sections:

ACCUSED 1: **Abhishek Lepat** had been charged under Section **304** (Punishment for Culpable Homicide not mounting to murder) read with Section **34** (Common Intention) and Section **186** (Obstructing public servant in discharge of public functions) of Rabat Penal Code, 1860.

ACCUSED 2: **Angad Lepat** had been charged under Section **304** (Punishment for Culpable Homicide not mounting to murder), Section **107** (Abetment of a thing) read with Section **34** (Common Intention) and Section **186** (Obstructing public servant in discharge of public functions) of Rabat Penal Code, 1860.

ACCUSED 3: **Dushyant Liko** had been charged under Section **304** (Punishment for Culpable Homicide not mounting to murder) read with Section **34** (Common Intention) and Section **107** (Abetment of a thing) of Rabat Penal Code, 1860.

SUMMARY OF ARGUMENTS**1. ABHISHEK, ANGAD AND DUSHYANT ARE JOINTLY LIABLE FOR MURDER**

It is humbly submitted before this Hon'ble Court that Abhishek, Angad and Dushyant had anti-national ideologies. They wanted to impress their political leaders and when they got a chance to harm the State machinery i.e. police, they made a plan and executed it by murdering Amit Choudhary. Their acts fulfill every criteria of S. 302 of RPC and therefore, are liable for murder.

Furthermore, the charge of S. 304 shall be altered to S. 302 as the acts done by Accused fulfill the ingredients of S. 302 and there shall be no lesser punishment for them. Also, the investigation conducted by I.O. was of preliminary nature and after the case of prosecution, the charge shall be that of S. 302.

2. ABHISHEK, ANGAD AND DUSHYANT HAD COMMON INTENTION TO COMMIT THE OFFENCE

It is humbly contended before this Hon'ble Court that the Accused made a pre- plan to commit the offence of murder and committed it in furtherance of the pre- arranged plan. The fact that the Accused had hatred against the Government functionaries and they got a chance to take revenge against them solidifies their mala fide intention to commit the offence.

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Also, the Report of Investigating Officer says that Abhishek and Angad were expecting some confrontation from police and when they actually got confronted, they used that chance to to pursue their ill- motive under the blanket of private defence.

3. ANGAD AND DUSHYANT ARE LIABLE FOR INSTIGATING ABHISHEK

It is humbly submitted that Angad and Dushyant are equally liable for the punishment as that of Abhishek. They are the principle offenders and used Abhishek to execute their ill plans. It is evident from the facts that when Abhishek went to Dushyant after confrontation from Amit Choudhary, Dushyant asked him to kill the Inspector so that party leaders will be impressed.

Furthermore, at the scene of crime, when Inspector only showed the gun hostler to Abhishek, it was Angad who put the reasonable fear in his mind that the Inspector is going to shoot him so that Abhishek could use the private defence.

4. ABHISHEK AND ANGAD ARE LIABLE TO OBSTRUCT AND CRIMINALLY ASSAULT U/S. 186 AND 353 OF IPC –

It is humbly submitted before this Hon'ble Court that the charge of S. 186 shall be read with S. 353 as along with obstructing public servant in discharging his duty, they used the criminal force against him which lead to his death. When Inspector reprimanded them for causing nuisance, they entered into a scuffle with him and even executed thei ill plamn of causing death of him.

ARGUMENTS ADVANCED

1. ABHISHEK, ANGAD AND DUSHYANT ARE JOINTLY LIABLE FOR MURDER.

It is humbly contended before this Hon'ble Sessions Court of Mavada, Jagutar that Abhishek (*hereinafter referred as DW 1*), Angad (*hereinafter referred as DW 2*) and Dushyant (*hereafter referred as DW 3*) are guilty of culpable homicide not amounting to murder u/s. 302 of Rabat Penal Code, 1860. In the present case, the Hon'ble Court of Sessions has framed charges based on the Report¹ submitted by SI Hardik Bhatia (*hereinafter referred as PW- 3*²) u/s. 173³ of Code of Criminal Procedure.

[1.1] CHARGES U/S.304 TO BE ALTERED WITH SEC.302 OF RPC-

Section 216, CrPC gives considerable power to the Trial court i.e. even after the completion of evidence, arguments heard and the judgment reserved, it can alter and add any charge, subject to the conditions therein. Alteration or addition of charge must be for an offence made out by the evidence recorded during the course of trial before the court.⁴

It is all the same trite that the question of any such addition or alteration would generally arise either because the court finds the charge already framed to be defective for any

¹ Moot proposition, Annexure- 6, Report of PW- 3, p. 19

² Moot proposition, List of Witnesses, p. 4

³ Section 173- Report of Police Officer on completion of investigation, Code of Criminal Procedure, 1973

⁴ CBI v. Karimmullah Osan Khan, (2014) SC

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reason or because such addition is considered necessary after the commencement of the trial having regard to the evidence that may come before the court.⁵

[1.2] THERE WAS AN INTENTION TO CAUSE THE DEATH OF AMIT CHAUDHARY

Murder is the gravest form of culpable homicide.⁶ Murder is defined u/s. 300 of RPC as:

S. 300(1) - *'Act by which the death is caused is done with the intention of causing death.'*

The word 'act' includes the omission as well. Any omission by which the death is caused will be punishable as if the death is caused directly by an act.⁷ Intention to cause death may be revealed by the whole circumstances of the story.⁸ Intention of the person can be gathered from the action of the person.⁹ So, as stated DW 1 and DW 2 always used to get into quarrels with the police and college administration on account of the protests carried out to support Ram and their party leader who was booked for incitement of his party members to kill policemen if need comes. And, because of this they had hatred for the police machinery, and when deceased had come to warn them, they wanted to kill him and impress their party leaders. They also took the advice of DW 3 on the further plans of executing him. Intention to cause death can be inferred from the act or illegal omission.

The difference between an intention to cause death and an intention to cause such bodily injury as is likely to cause death is a difference in degrees only.

⁵ Jaswinder Saini and Ors. V. State of Government of Nct of Delhi, (2013) SC

⁶ State of A.P. v. R. Punnya, AIR 1977 SC 45

⁷ Arjun v. State of Rajasthan, AIR 1994 SC 2507

⁸ James v. State of Kerala, (1995) 1 Cr LJ 55 Kr

⁹ Kesar Singh v. State of Haryana, (2008) 15 SCC 753

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT, 2016**[1.3] THE ACCUSED HAD MOTIVE TO KILL –**

As the motive is a state of mind, intention is also a state of mind and it can be proved only by its external manifestations. It is presumed that the intention of the accused can be no other than to take the life of the victim and the offence committed amounts to murder.¹⁰

Moreover, the intention to kill is not required in every case, mere knowledge that natural and probable consequences of an act would be death will suffice for a conviction under s. 302 of RPC.¹¹ The intention to kill can be inferred from the murder and nature of the injuries caused to the victim.¹²

Causing a serious injury on body of the deceased with weapon must necessarily lead to the inference that the accused intended to cause death of the victim, and it answers to section 300 and is murder.¹³

Sec 8, Evidence Act stipulates that any fact is relevant which shows or constitutes motive or preparation for any fact in issue or relevant fact. Thus, previous acts and communication between parties are admitted to show motive.¹⁴ Heinous offences have been committed for very slight motive.¹⁵ Therefore, all the three accused had the same motive i.e. to impress their political leaders and take revenge from the government officials as they were against the policies of the government.

¹⁰ 5 (1951) 3 Pepsu LR 635

¹¹ Santosh v. State of Madhya Pradesh, 1975 Cri LJ 602 (SC)

¹² Laxman v. State of Maharashtra, AIR 1974 SC 1803

¹³ Md. Idrish v. State, 2004 Cr LJ 1724 (Raj); Md. Sharif And Anr. v. Rex, AIR 1950 All 380; Badri v. State of U.P., AIR 19953 All 189; Dibia v. State of U.P., AIR 1953 All 373, State of Maharashtra v. Bhairu Sattu Berad, AIR 1956 Bom 609

¹⁴ Son Lal v State of Uttar Pradesh, AIR 1978 SC 1142, Chhotka v State of WB, AIR 1958 Cal 482

¹⁵ State v Dinakar Bandu (1969) 72 Bom LR 905

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT, 2016**[1.4] THE INJURY CAUSED WAS SUFFICIENT IN ORDINARY COURSE OF NATURE TO CAUSE DEATH-**

In the leading case of *Virsa Singh*¹⁶, There was only one injury on the deceased and that was attributed to him. It was caused as a result of the spear thrust and the doctor opined that the injury was sufficient in the ordinary course of nature to cause death. The Courts also found that the whole affair was sudden and occurred on a chance meeting. The Supreme Court took a different view that the prosecution must prove: “that the injury of the type made up of the three elements set above is sufficient in ordinary course of nature to cause death.”

In the instant case, the injury caused by DW 1 to the deceased was on the vital part i.e head. And according to the medical evidences¹⁷ and¹⁸ it is clear that the blow by the iron rod was sufficient in the ordinary course of nature to cause death of Amit Chaudhary.

[1.5] SECTION 304 -

Unlawful homicide includes murder, manslaughter, causing death by dangerous driving, killing in pursuance of a suicide part, and infanticide.¹⁹ Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder.²⁰

[1.6] TEST OF VELOCITY OF BLOW AND LOCATION OF INJURY –

¹⁶ *Virsa Singh v. State of Punjab*, AIR 1958 SC 465

¹⁷ Annexure 3 , pg 11 – Post Mortem Report

¹⁸ Annexure 4 , pg 13- Forensic Report

¹⁹ Halsbury’s Laws of England 2nd Edition, Volume 9, p. 429

²⁰ *Jabamalai Royappan*, In re, 1981 LW (Cr) 136

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The nature of the offence doesn't depend on the location of injury by the accused. This intention is to be gathered by all facts and circumstances of the case. It was held that the location of injury coupled with the velocity of the blow shown by the depth of injury shows that the intention was murder.²¹ Injury in another Supreme Court case was on a region of head which was a *vital part*. According to medical evidence this injury proved fatal. When a person is causing injury on such a vital part the intention to kill can certainly be attributed to him.²² In the instant case, DW 1 has also hit deceased on the vital part causing the skull crack and ultimately resulting in his death.

[1.7] NO RIGHT OF PRIVATE DEFENCE –

Accused caused an injury on forehead with an axe. The evidence of witnesses believed by the court and corroborated by medical evidence, accused cannot claim for the private defence.²³

Person exceeding the right of private defence are punished under section 304 Part I and not under section 302.²⁴ If the public servant is acting in good faith under color of his office there is no right of private defence against his act.²⁵

²¹ Jaspal Singh v. State of Punjab, AIR 1986 SC 483

²² Chahat Khan v. State of Haryana, AIR 1972 SC 2574

²³ A.C. Gangadhar v. State of Karnataka AIR 1998 SC 2381

²⁴ Sundaramurthy v. State of Tamil Nadu, AIR 1990 SC 2007

²⁵ Poomalai Udayan, (1898) 21 Mad 296.

2. ABHISHEK, ANGAD AND DUSHYANT HAD COMMON INTENTION TO COMMIT THE OFFENCE

It is humbly submitted before this Hon'ble Court that Abhishek shared the common intention to kill Inspector Amit Choudhary under Section 34 of RPC, acts done by several persons in furtherance of common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.²⁶ The ingredients are as follows:

1. A criminal act must be done by several persons.
2. There must be common intention of all to commit that criminal act.
3. There must be direct or indirect participation of all the persons in the commission of the offence in furtherance of that common intention.

[2.1] THE ACCUSED WERE INFLUENCED BY IDEOLOGIES OF CPR:

It is clearly evident from the facts that the Collective Party of Rabat (CPR) was not in support of the present government which was proved on two occasions where the party members asked Abhishek to organise a rally in support of anti-national personalities and also wanted the provision of sedition to be removed from the RPC.

Abhishek, Angad and Dushyant also held the same ideologies and always disregarded the government and its machineries and always encouraged each other to commit some action against the lawful institutions.

²⁶ Parasa Raja Manikyala Rao v. State of A.P., AIR 2004 SC 132; Girija Shankar v. State of U.P., AIR 2004 SC 1808; Nandu Rastogi alias Nandji Rastogi v. State of Bihar, 2003 SCC (Cri) 177

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The words in ‘furtherance of the common intention of all’ in S. 34, RPC do not require that in order that the section may apply, all participants in the joint act must either have the common intention of committing the same offence or the common intention of producing the same result by their joint act. It is enough if all of them intend that the joint act be performed.²⁷

[2.2] THE OFFENCE WAS COMMITTED IN PURSUANCE OF PRE-ARRANGED PLAN:

S. 34 requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another must have been done in furtherance of the common intention of them all. Nor is a long interval of time required it could arise and be formed suddenly.²⁸

In the case of *Krishna Govind v. State of Maharashtra*²⁹, *Subba Rao JJ.* stated: “It is well settled that common intention within the meaning of the section implies a pre- arranged plan and the criminal act was done pursuant to the pre-arranged plan. The said plan may also develop on the spot during the course of the commission of the offence.³⁰

In order to bring a case under S. 34 of the Indian Penal Code it is not necessary that there must be a pre-meditation, the common intention can be formed in the course of the occurrence.³¹ For applying Sec. 34 it is not necessary to show some overt act on the part of the accused.³²

²⁷ Basappa v. Govt. of Mysore, ILR (1951) Mys 169 : 30 Mys LJ 122 : AIR 1951 Mys 1 (3)

²⁸ Bhopal Singh v. State of Rajasthan, AIR 1968 Raj 305 : 1968 Cr LJ 1572 : 1968 Raj LW 574

²⁹ Krishna Govind v. State of Maharashtra, AIR 1968 SC 1413

³⁰ San Karan Nair Chellappen Nair v. State of Kerala, AIR 1965 Ker. 248; Rajput Anil Ram Singh & Anr.v. State of Gujarat, (1992) 2 GLR 1146 at p.1171; Tehal Singh v. State of Punjab, AIR 1979 SC 1347

³¹ Hari Om v. State of Uttar Pradesh, 1993 Cri.L.J. 1363 (SC)

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Pursuing to the hatred of Accused against the government machineries, they made a plan to cause harm by doing some overt act so that they could be praised by their political leaders. This is evident from the fact that just after the day Amit Chudhary warned them about Dinesh and Peter, they researched on the backgrounds of Dinesh, Peter and Amit Choudhary, about legal remedies on private defence and action of police during riots, etc.

[2.2.A] REPORT OF INVESTIGATING OFFICER CORROBORATES WITH THE PRESENCE OF PRE- ARRANGED PLAN:

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.³³ The intention of accused has to be inferred from his act, or conduct and other relevant circumstances. It is not necessary to attract the section that any overt done by any one of the accused in furtherance of the common intention.³⁴ Even if an accused is merely present, he may attract S. 34 if he does something in furtherance of common intention.³⁵

The presence of pre- arranged plan is also corroborated by the Report of Investigation Officer³⁶ where he had stated that the accused were motivated enough to prove their worth to their political bosses and they were also expecting some confrontation from the police especially Amit Choudhary and were well prepared for it.

³² State of Punjab v. Bakhshish Singh, 2009 (1) A.C.R. 1124

³³ Satish Shah v. State of Bihar 1995 Cr LJ 213 (Pat), Bashir v. State 1953 CrLJ 1505

³⁴ State of U.P. v. Iftikhar Khan, AIR 1973 SC 863 : 1973 Cr LJ 636 : (1973) 1 SCC 512.

³⁵ Ramshet v. Butchiah, 1969 Cr LJ 542 (549) (AP).

³⁶ Moot Proposition, Annexure- 6, p. 19

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT, 2016**[2.3] THE COMMON INTENTION DEVELOPED ANTERIOR AS WELL AS ON THE SPOT OF CRIME:**

The common intention should be anterior in point of time, to the commission of crime. It may also develop at or above the time when the crime is committed.³⁷

The Supreme Court in the case of *Risideo Pandey v. State of U.P.* held that: “Common intention” under Section 34 presupposes a prior concert, that is a prior meeting of mind, but such pre-concert can develop on the spot and without any long interval of time between it and the doing of the act commonly intended.³⁸

Therefore, the fact that the DW-1 and DW-2 were expecting some confrontation from the deceased, when he actually confronted them, proves the common intention which developed then and there as they got a chance to create a situation where they could exercise the right of private defence under the blanket of ill-motive to cause harm against the deceased.

[2.4] RULE OF CONSTRUCTIVE LIABILITY:

A charge of constructive liability for an offence presupposes sharing of particular intention by more than one person to do a criminal act.³⁹ It is immaterial by whose hand the eventual blow was dealt. It is essentially the rule of constructive liability which Section 34

³⁷ Sheoram Singh v. State of U.P., AIR 1972 SC 2555.

³⁸ Risideo Pandey v. State of U.P. AIR 1955 SC 334.

³⁹ Hakim Mian v. State of Bihar, 1971 UJ (SC) 627.

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propounds. An accused sharing the common intention is as guilty as the accused that inflicts to blow or actually participates in the crime.⁴⁰

It may be a preliminary act necessary to be done before achieving the common intention or it may become necessary to do it after achieving the common intention or it may be done while achieving the common intention.⁴¹

**3. ANGAD AND DUSHYANT ARE LIABLE FOR INSTIGATING
ABHISHEK.**

It is humbly submitted before this Hon'ble Court that DW-2 and DW-3 are liable u/s. 109 of RPC in pursuance to instigating DW-1 to commit the offence. The ingredients of S. 107 are:

- a. That the accused aided, abetted, counseled, or procured the commission of the principal offence;
- b. That the principal offence was in fact committed; and
- c. That he had the intent to aid or encourage its commission.⁴²

The word 'instigate' means to goad or urge forward or to provoke, incite, urge or encourage to do an act.⁴³ Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself.⁴⁴

⁴⁰ Tehel Singh v. State of Punjab AIR 1979 SC 1347.

⁴¹ Bashir v. State AIR 1953 All 668 (674).

⁴² CROSS and JONES on Introduction to Criminal Law, 9th Edn, para 19.4, p.387

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT, 2016**[3.1] THERE WAS AN ACTIVE SUGGESTION ON PART OF DUSHYANT:**

A mere acquiescence, or permission, does not amount to instigation. Nor can deliberate absence from the scene of offence amount to instigation.⁴⁵ Instigation implies knowledge of the criminality of an act. Words which amount merely to a permission may perhaps amount to an instigation, but this will depend on the position of the speaker and the occasion on which they are spoken. There has to be a reasonable certainty in regard to the meaning of the words used by the ‘inciter’ in order to judge whether or not there was an incitement, but it is not necessary in law to prove the actual words used for the incitement.⁴⁶

The position which Dushyant was holding in the party and how much his words and suggestions influenced Abhishek is evident from the fact that when Dushyant said to Abhishek, “maar daalo sale ko, hamare neta to khush honge” and encouraged him by saying that Abhishek knows how to execute the plans, Abhishek actually committed the brutal offence of murder.

[3.1.A] DUSHYANT WAS PRINCIPLE PERSON IN THE OFFENCE:

As laid down in HALSBURY, “A principal is a person who by his own act or omission directly brings about the actus reus, or any part of the actus reus, of a crime. A person may be a principle, notwithstanding the fact that he is not present when the crime is committed, if he causes a actus reus by some contrivance, or by the use of an innocent agent. If several

⁴³ Parimal Chatterjee, (1932) 60 Cal 327

⁴⁴ Nazir Ahmed vs. Emperor, AIR 1927 Allhd 730

⁴⁵ Etim Ali Mujumdar, (1900) 4 CWN 500

⁴⁶ Prem Narain vs. State, 1957 CRLJ 337

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persons act together in a common unlawful enterprise and the actus reus of the crime is caused by one of them, but it is not known by whom, all our principals in its commission.⁴⁷

[3.2] THE OFFENCE COMMITTED WAS IN PURSUANCE OF THE ABETMENT:

Under Sec.107, IPC it is the instigation to the commission of the act itself which constitutes the offence that is regarded as abetment. The threat would become instigation only if it is found that in the event of the threat having no effect the gun should in fact be fired.⁴⁸ The word 'instigates' in Sec. 107, IPC does not merely mean the placing of temptation to do a forbidden thing, but the actively stimulating a person to do it.⁴⁹

Here, DW-1 committed the exact offence for which he was instigated by Dushyant. As he already had hatred for government machineries in his heart, the instigation by Dushyant only triggered his hatred and he got a chance to actually cause harm to police.

Moreover, the fact that Angad always supported Abhishek in right or wrong deeds, in the scene of crime, when Amit Choudhary only showed the gun holster, it was Angad who aided and put fear in his mind that Inspector is going to shoot him, after which Abhishek got a chance to take the malafide stand of private defence.

[3.3] PRICIPLE OF INNOCENT AGENT:

An innocent agent is one who commits the *actus reus* of an offence but is himself devoid of responsibility. If a person makes use of an innocent agent in order to procure the

⁴⁷ HALSBURY's on Laws of ENGLAND, 4th Edn, Vol 11, Para 43 p. 34

⁴⁸ Shri Lal vs. State of M.P, AIR 1953 MP 155

⁴⁹ Re Laxmi Narain Iyer, AIR 1918 Mad 738

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commission of an offence, that person, not the innocent agent, is the perpetrator, even though he is not present at the scene of the crime and does nothing with his own hands. If several persons act together in a common unlawful enterprise and the actus reus of the crime is caused by one of them, but it is not known by whom, all are principals in its commission.⁵⁰

4. ABHISHEK AND ANGAD ARE LIABLE TO OBSTRUCT AND CRIMINALLY ASSAULT U/S. 186 AND 353 OF IPC.

It is humbly submitted before this Hon'ble court that DW 1 and DW 2 are liable under Section 186 and Section 353 of RBC for obstructing Amit Chaudhary when he was exercising his public functions and also criminally assaulting him. Therefore, they are liable under Section 186 and 353 of RBC.

[4.1] SECTION 186:

Section 186 of R. P. C. is defined as follows,

“whoever voluntarily obstructs any public servant in the discharge of his public function, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

This section provides for voluntarily obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or resistance was offered to a public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant believing

⁵⁰ HALSBURY'S on Laws of England, 4th ed., Vol. 11, para 43, p. 34.

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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.⁵¹

[4.2] ESSENTIAL INGREDIENTS OF SEC. 186 RPC –

It was held in case titled as *Shivdas Omkar*⁵². The prosecution must prove:

- (i) That the person obstructed was public person.
- (ii) That at the time of obstruction he was discharging his public functions.
- (iii) That the accused obstructed him in the same.
- (iv) That he did so voluntarily.”

The word “obstruction” connotes some overt act in the nature of violence or show of violence.⁵³ To constitute “obstruction”, it is not necessary that there should be actual criminal force. It is sufficient if there is either a show of force or a threat or any act preventing the execution of any act by a public servant.⁵⁴

The Allahabad High Court in case titled as *Tohfa*⁵⁵ held that the word 'obstruction' is not confined to physical obstruction and mere threat or threatening language is sufficient to constitute the offence under this section. Where a constable entered a house and found in a room three articles alleged to have been stolen, but before the constable could remove them the accused caused the door of the room to be shut and also threatened to kill the constable if he

⁵¹ Lilla Singh (1894) 22 Cal 286.

⁵² (1912) 15 Bom LR 315

⁵³ Phudki, AIR 1955 All 104.

⁵⁴ Babulal, (1956) 58 Bom LR 1021.

⁵⁵ AIR 1933 All 759

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removed the articles, it clearly comes under the purview of voluntary obstruction and is punishable.⁵⁶ The views of Madras and Allahabad High Courts, is that the offence under Section 186 is committed even though the act obstructed may not be, on a strict construction, a legal or duly authorised act, provided that when the obstruction is offered the officer is discharging his functions in good faith.⁵⁷

[4.3] SECTION 353:

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant.

Constable trying nab an offender for a cognizable offence has been executing his duties. Causing hurt to such a constable is causing hurt while he has been executing his duties and assault to such a constable constitutes the offence under Section 353, R.P.C.⁵⁸

For an offence under Section 353, it is not essential that the hurt should be caused to the public servant while he is actually discharging his official duty. If a beating is given in consequence of anything done by him in the discharge of his duties as a public servant, then it is sufficient to attract the application of Section 332 or Section 353, R.P.C.⁵⁹

⁵⁶ Narayana Rajun v. Emperor, AIR 1924 Mad 760.

⁵⁷ Queen v. Poomalai Udayan, 21 Mad 296.

⁵⁸ Patar Munda v. State of Orissa, AIR 1958 Ori 69.

⁵⁹ State v. Usman Gani, (1964) 1 Cr LJ 254 (Raj).

PRAYER FOR RELIEF

Wherefore in the light of the facts of the case, arguments advanced and authorities cited, Counsels for the Prosecution humbly pray and implore before this Hon'ble Court of Sessions:-

That it may please to **alter (u/s 216 of CrPC):**

1. Charge of 304 to 302 of RPC; and

To **add (u/s 216 of CrPC):**

2. Charge of 186 to 353 of RPC

and

To **convict (u/s 235 of the CrPC):**

3. Abhishek, Angad and Dushyant for the offence of murder of Amit Choudhary u/s 302 r/w 34 of RPC;
4. Abhishek and Angad for obstructing and using criminal force against police officer in discharge of his public functions u/s. 186 and 353 of RPC; and
5. Angad and Dushyant for the offence of abetment of murder of Amit Choudhary u/s 109 of RPC.

The Court may make any other such order as it may deem fit in terms of justice and good conscience.

And for this act of kindness the Prosecution shall as duty bound ever humbly pray.

Respectfully Submitted

S/d _____

Place: Mavada, Jagutar

Counsel(s) for Prosecution

Date: 24th September 2016

(Public Prosecutor)