

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

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

S.C. NO. 101 OF 2016

STATE OF JAGUTAR

(PROSECUTION)

VERSUS

ABHISHEK, ANGAD & DUSHYANT

(DEFENCE)

FOR OFFENCES CHARGED UNDER:

SECTION 186, 107 & 304 READ WITH SECTION 34 OF RABAT PENAL CODE

UPON SUBMISSION TO THE HON'BLE SESSIONS JUDGE

MEMORANDUM ON BEHALF OF THE PROSECUTION

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LIST OF ABBREVIATIONS

AIR	All India Reporter
All	Allahabad High Court
Anr.	Another
Cal	Calcutta High Court
Cri LJ / Cr LJ	Criminal Law Journal
CrPC	Criminal Procedure Code
Del	Delhi High Court
DW	Defence Witness
Ed.	Edition
Guj	Gujarat
HC	High Court
i.e.	that is
IPC	Indian Penal Code
IC	Indian Cases
Mad	Madras High Court
No.	Number

Ori Orissa High Court

Ors. Others

p. Page Number

P&H Punjab and Haryana High Court

Pat Patna High Court

PW Prosecution Witness

Raj Rajasthan High Court

RPC Rabat Penal Code

SC Supreme Court

SCC Supreme Court Cases

SCJ Supreme Court Journal

SCR Supreme Court Reporter

TN Tamil Nadu High Court

u/s under section

v. Versus

§, S. Section

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STATEMENT OF JURISDICTION

The Hon'ble Court has jurisdiction to try the instant matter u/s 177 read with Section 209 of the Code of Criminal Procedure, 1973.

Section 177:

'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:

'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 the case to the Court of Session; (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.'

STATEMENT OF FACTS

Background

Abhishek (*hereinafter* A1) and Angad (*hereinafter* A2) were childhood friends and belonged to the same community, i.e. Lapat community. They were pursuing their masters from Presidency College. A1 was the Union leader in the college and A2 was his follower. A1 and A2 were always involved in various protests, mainly supporting people charged for Sedition. Dushyant (*hereinafter* A3) was a local leader of the party which the union of A1 was affiliated i.e. CPR which was also the opposition party in the State. Tanya and Natasha are friends of A1 and A2 and belong to the same community. Dinesh and Peter are the two students of Presidency College who are continuously teasing Tanya and Natasha after the time they supported A1 in one of his protest. Amit Chaudhary is the local policeman who was known to be involved in the encounter of local goons and had also threatened A1 and A2.

Legal Matter

Dinesh and Peter used to tease Tanya and Natasha, thus, A1 and A2 used to accompany them to the bus stop so that they can go back home safely. A1 and A2 confronted Dinesh and Peter on 28th March, 2016 and 30th March, 2016. On 30th there was a quarrel among A1, A2 and Dinesh and Peter. On April 7th, 2016 the incident repeated again at the bus stop and this time Amit Chaudhary suddenly came into the scene and grabbed A1 from the back and slapped him and pointed his hands towards his gun. A2 presuming that Amit is going to kill A1, warned him to be aware. A1 was eventually able to free himself from the grip of Amit and in the fit of rage threw a metal rod at him. Amit not expecting this falls down on the pavement and his head hit the stump of the tree. He was taken to the hospital and was declared dead. The three accused have now been charged under different provisions of RPC

STATEMENT OF CHARGES

Charge I

Abhishek has been charged under Section 186 and Section 304 read with Section 34 of Rabat Penal Code for the offence of obstructing a public servant in discharge of public functions and Culpable Homicide not amounting to murder.

Charge II

Angad has been charged under Section 186, Section 304 and Section 107 read with Section 34 of Rabat Penal Code for the offence of obstructing a public servant in discharge of public functions, Culpable Homicide not amounting to murder and abetment of a crime.

Charge III

Dushyant has been charged under Section 304 and Section 107 read with Section 34 of Rabat Penal Code for the offence of Culpable Homicide not amounting to murder and abetment of a crime.

SUMMARY OF ARGUMENTS

ISSUE 1**The three accused are liable u/s 304 RPC**

It is humbly submitted before the Hon'ble court that A1 , A2 and A3 are liable under S. 304 RPC as they all had common intention to commit the offence and there was also abetment on the part of A2 and A3 for the offence under S. 304. There was meeting of minds before the commission of the offence which was developed during the conversation between A1 and A2 and A3, where words used by A3 infuriated the former two to commit the offence which can be clearly seen through the research conducted by them. A2 and A3 were liable for abetment as they had intention to abet the commission of the offence. The words used by A3 during conversation like “*support*” and “*protect*” shows that he wanted to instigate A1 to commit the offence and A2 can also be held liable for abetment under wilful misrepresentation. Further, A1 had the necessary *mens rea* to cause bodily injury that was like to cause death and his act does not come under the purview of self-defence.

ISSUE 2**A1 and A2 are liable for the offence u/s 186 RPC**

It is humbly submitted before the Hon'ble court that A1 and A2 are liable under S. 186 as there was voluntarily obstruction on the part of them while the police officer was performing his duty. It is clear from the facts that the deceased was only doing his duty of maintaining public order which was disrupted due to actions of A1 and A2. The fact that the deceased was police officer was known to both the accused and therefore, it can be established that they had the intention to stop the deceased from performing his public duty.

ARGUMENTS ADVANCED

1. THE THREE ACCUSED ARE LIABLE U/S 304 RPC

It is submitted before this Hon'ble court that the three accused are liable u/s 304¹ RPC. The submissions in this regard are made in four limbs: [1.1] The three accused shared Common Intention to commit the crime; [1.2] A2 and A3 are liable for abetment of the offence under S. 304, RPC; [1.3] A1 had a *mens rea* in relation to the offence committed; [1.4] A1 acted in self-defence.

1.1 THE THREE ACCUSED SHARED COMMON INTENTION TO COMMIT THE CRIME

It is contended before this Hon'ble court that in the present case all the three accused i.e. A1, A2 and A3 shared the common intention to commit the crime u/s 299² of RPC. '*Common intention*' means that each member of the group is aware of the act to be committed.³ Where direct evidence is not available, it has to be inferred from the circumstantial evidence.⁴ The intention may be inferred from the surrounding circumstances and the conduct of the parties.⁵ The submissions in this regard are made in two limbs: [1.1.1] There was a meeting of mind among the three accused to commit the crime; [1.1.2] A1 and A2 acted in furtherance of the Common Intention.

¹ § 304 of IPC (Act No. 45 of 1860).

² § 299 of IPC (Act No. 45 of 1860).

³ Abdul Sayeed v. State of MP, (2010) 10 SCC 259.

⁴ § 21 of Evidence Act (Act No. 1 of 1872); *see also* Badruddin v. State of UP, AIR 1998 SC 3243.

⁵ Bhaba Nanda Sarma and Ors. v. State of Assam, AIR 1977 SC 2252; *see also* Krishnan and Anr. v. State, (2003) 7 SCC 56; *see also* Girija Shankar v. State of UP, (2004) 3 SCC 793.

1.1.1 There was a meeting of mind among the three accused to commit the crime

It is submitted that for the purpose of establishing that the accused shared a Common Intention, it is not necessary to prove in every case that there was any prior or pre-arranged plan or a prior meeting between the accused. However, requirement for the purpose of establishing common intention is that **there was a meeting of the minds of the accused before the offence was committed.**⁶ Though, in the present matter no strict proof of pre-arranged plan exists but it is clear that there was a prior meeting of minds and after which they acted in furtherance of it. This clearly shows that all the co-accused had the intention to commit the crime and to plead self-defence once crime was committed.

In the present case, though A3 was not present at the crime scene and had no role in the performance of the crime but he instigated the principal offenders and it was his words which infuriated A1 and A2 for the commission of the crime. Moreover, it was only after the conversation with A3 that the Common Intention between all the three accused developed.

It is not necessary that each one of the accused must assault the deceased to come within the purview of S. 34.⁷ It is enough if it is shown that they shared a common intention to commit a crime by doing their assigned acts. Moreover, it shows an evil intent to commit some criminal act, but not necessarily the same offence which is committed.⁸ No hard and fast rule can be made out regarding applicability or non-applicability of S. 34.⁹ In the instant matter, though A2 was not holding any weapon¹⁰ and did not actively assault the deceased but his

⁶ Khacheru Singh v. State of UP, AIR 1956 SC 546.

⁷ Parasa Raja Manikyala Rao v. State, (2013) 12 SCC 306.

⁸ Saidu Khan v. State, AIR 1951 All 21 (FB).

⁹ Krishnan and Anr. v. State, (2003) 7 SCC 56.

¹⁰ Gaya Prasad v. State of Maharashtra, AIR 1971 SC 1112.

part of the crime was done by accompanying A1 in the research related to the crime and, being present at the crime scene. He also created a scenario where A1 could easily kill the deceased and plead self-defence.

1.1.2 A1 and A2 acted in furtherance to the common intention

It is submitted that common intention can also be established by actions. Actual physical participation in the crime is not always essential to fix liability u/s 34¹¹ RPC. The essence of liability under it is to be found in the existence of a common intention animating the offenders leading to the doing of a criminal act in furtherance of the common intention and presence of the offender sought to be rendered under S. 34 is not, on the words of the statute, one of the conditions of its applicability.¹² In the case of *Mohan Singh v State of M.P., AIR 1999 SC 883* –

“...accused entered the house of the deceased and beat his mother and sister and when the deceased and his father asked him as to why he has done it, he fired shots which killed the deceased. The father had said ‘Mar sale ko jo kuch hoga nipat lenge’ apart from this nothing was done by him. It was held that the aforesaid words of the father could infuriate anyone including Mohan Singh to accomplish the ultimate act of murder. It was at this point of time when common intention between accused and his father developed and matured.”¹³

In the instant matter the common intention was developed among the co-accused from the point where A3 instigated and comforted A1 and A2. It can be clearly inferred from the facts of the case that, only after the conversation with A3; A1 and A2 started researching on the background of the deceased and several other provisions like police actions during riots and

¹¹ § 34 of IPC (Act No. 45 of 1860).

¹² RATANLAL & DHEERAJLAL, INDIAN PENAL CODE, (33th Ed., 2011), p. 135-140.

¹³ Mohan Singh v. State of MP, AIR 1999 SC 883.

provocation and the legal provision for self-defence.¹⁴ And this continued for a period of six days before the actual incident happened.

It can be clearly inferred from the facts that the co-accused may not have the intention to kill the deceased, in the given way, but they had the intention to do so, whenever they get a chance. Thus, it is humbly submitted before this court that all the three accused in the present matter had the Common Intention to kill the deceased and therefore liable should be held liable with the aid of S. 34.

1.2 A2 AND A3 ARE LIABLE FOR ABETMENT OF THE OFFENCE U/S 304, RPC

It is humbly contented before this Hon'ble Court that A3 and A2 are guilty of the offence u/s 107¹⁵, of the RPC. 'Abetment' includes instigating a person to do a certain thing or engaging with one or more other person or persons in a conspiracy to do that thing and an act or illegal omission in pursuance to the conspiracy is committed or intentionally aiding a person by any act or illegal omission, to do that thing.

Abetment involves the mental process of instigating a person.¹⁶ '*Instigation*' consists in actively suggesting and stimulating another to act.¹⁷ To constitute '*instigation*', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward.¹⁸ The issues are: **[1.2.1]** The two accused had intention to abet the commission of the crime; **[1.2.2]** *Actus Reus* was performed in furtherance to the *mens rea*; **[1.2.3]** Abetment via Instigation can also be caused by wilful misrepresentation.

¹⁴ Case Data, ¶ 16.

¹⁵ § 107 of IPC (Act No. 45 of 1860).

¹⁶ 11 HALSBURY, LAWS OF ENGLAND, (4th Ed., 1947), p. 34; *see also* Digambar Bhujang Kamble v. State of Maharashtra, Criminal Appeal No. 44 of 2012 (Mah).

¹⁷ Re Lakshminarayana Aiyar, AIR 1918 Mad 738.

¹⁸ I S K SARVARIA, RA NELSON'S INDIAN PENAL CODE, (10th Ed., 2008).

1.2.1 The two accused had intention to abet the commission of the crime

To make a person liable u/s 107, i.e. abetment by instigation, it is important to prove that there was presence of *mens rea*¹⁹ on the part of abettor and the act abetted should be committed in consequence of the abetment.²⁰ In furtherance to it, the acts of A2 and A3 can be shown to come under the ambit of abetment.

A person is said to instigate another or to do a thing when he actively suggests, stimulates, support, hints or insinuates the commission of the act.²¹ Instigation consists in actively suggesting and stimulating another to act by any means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.²²

The conversation between A3 and A1 shows that there was an element of encouragement in the words by A3.²³ The words used by A3 such as “*support*” and “*protect*”, clearly shows that there was an intention on the part of A3, to persuade A1 to the act. Moreover, he calling A1 “*hero*” and telling that he knows how to defend himself further escalates the fact.

1.2.2 *Actus Reus* was performed in furtherance to the *mens rea*

In the presence of such intention and when it has also been held that, advice can become instigation if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence.²⁴ It is clear from the facts that the advice given by A3 of killing the deceased, was to stimulate A1 to commit the act.

¹⁹ Re Nennur Rami Reddi, AIR 1917 Mad 351.

²⁰ Ranganayaki v. State, (2004) 12 SCC 521.

²¹ Nazir Ahmad v. Emperor, AIR 1927 All 730.

²² Emperor v. Amiruddin, (1922) 24 Bom LR 534.

²³ Case Data, ¶ 15.

²⁴ Raghunath Das v. Emperor, AIR 1920 Pat 502.

The use of words like, “.....*kam se kam humare neta kush honge*”²⁵, shows that A3 had the necessary *mens rea* that his words will stimulate the commission of the act by A1, considering his political background.

1.2.3 Abetment via Instigation can also be caused by wilful misrepresentation

A person who by wilful misrepresentation or by wilful concealment of fact which is bound to be disclosed, voluntarily causes or procures or attempts to cause or procure a thing to be done, is said to instigate doing of that thing.²⁶ If there is concealment, i.e. if something is done by one to conceal from another material fact which the former is bound to disclose then by virtue of explanation 1 of S. 107 of RPC, the conduct of the former would constitute ‘*instigation*’.²⁷

There was wilful misrepresentation on the part of A2 as it was clear that he wanted to persuade A1 to kill the deceased, through his words because he concealed a material fact of deceased not taking out his gun, who was actually only pointing towards the holster.

The misrepresentation of A2 can be proved wilful by considering his previous activities. His involvement in the conversation that took place between A1, A3 and him indicates the formation of intention in A2’s mind and him assisting A1 during research about the provisions of self-defence and his behaviour under certain circumstances clearly shows the *mens rea* on part of A2.

1.3 A1 COMMITTED CULPABLE HOMICIDE U/S 299 RPC

It is humbly submitted before this Hon’ble Court that the acts of the accused qualify as Culpable Homicide under S. 299 RPC. The section has both mental element and conduct

²⁵ Case Data, ¶ 15.

²⁶ State of AP v. Monica Bedi, (2006) CrLJ 4457 (AP); *see also* Criminal Procedure Code (Act No. 2 of 1974).

²⁷ Lakshminarayan v. State, (1962) MPLJ 246 (MP).

necessary in order to hold a person liable for the offence under it. The mental element of the section has three parts and at least one of them has to be present in order to constitute crime under this section. The issues are: [1.3.1] The act of A1 caused the death of the deceased; [1.3.2] The accused did the act with the intention of causing such bodily as is likely to cause death; [1.3.3] *In arguendo*, the accused had knowledge that his act is likely to cause death of the deceased.

1.3.1 The act of A1 caused the death of the deceased

It is humbly submitted that it was the actions of A1 which resulted in the death of the deceased. In the present case, A1 threw a metal rod and it hit the head (vital part) of the deceased. It has been held by one of the High Courts that death which is not the direct cause of the injury inflicted but from peritonitis which is the supervening cause, the accused must be held to be responsible for causing death.²⁸ In one of the cases multiple injuries were caused to the victim who died after a fortnight. Medical evidence gave cause of death as short supply of blood to kidneys as a result of multiple injuries by the victim. Pathologist also stated that the short supply of blood can be on account of various reasons including multiple injuries on question. It was held that death was caused on account of injuries.²⁹

1.3.2 The accused did the act with the intention of causing such bodily as is likely to cause death

The offence is Culpable Homicide if the bodily injury, intended to be inflicted, is likely to cause death; it is murder if such injury is sufficient, in the ordinary course of nature, to cause death.³⁰ The second clause of S. 299 requires an intention to cause such bodily injury as is

²⁸ Mohammad Salam v. State of MP, (1992) CrLJ 1612 (MP); *see also* Salebhai v. Emperor, AIR 1949 Nag 19.

²⁹ Pritam Singh v. State of Punjab, AIR 1993 SC 2604.

³⁰ RATANLAL & DHEERAJLAL, INDIAN PENAL CODE, (33th Ed., 2011), p. 2633.

likely to cause death. The question is that of fact and can be divided into two parts: [1.3.2.1]

The bodily injury was intended by the accused; [1.3.2.2] The injury was likely to cause death.

If both the answers are in affirmative, then the offence is Culpable Homicide.³¹

1.3.2.1 The bodily injury was intended by the accused

The intention of any party cannot be served to the Court in a coated plate and has to be derived from the various series of circumstances.³² In *Vedpal's Case*, where the death was caused by single blow with spade, there was no previous enmity between the accused and the deceased. The medical evidence showed that the spade blow caused damage to the skull, it was held that the accused is liable for Culpable Homicide not amounting to murder and convicted under S. 304 Part I.³³ In the present case the accused had the intention of causing such bodily injury as was likely to cause death, since he tried to damage a vital part of the body. Therefore, he is liable for Culpable Homicide not amounting to murder and should be punished under S. 304 Part I.

1.3.2.2 The injury caused was likely to cause death

In an Orissa case where the deceased sustained multiple injuries and which led to the amputation of the right foot from the level of the ankle and deceased died due to Uremia. It was held by the High Court that the assailants must have intended to cause such bodily as was likely to cause death and the offence thus attracts the mischief of Part I of 304 of RPC, the accused were convicted under the Part I, S. 304, RPC.³⁴

³¹ *Id*, p. 2635.

³² RATANLAL & DHEERAJLAL, INDIAN PENAL CODE, (33th Ed., 2011), p. 2638.

³³ *Vedpal v. State of Harayana*, AIR (1981) CrLJ 3556 (P&H).

³⁴ *Purna Padhi v. State of Orissa*, (1992) CrLJ 687 (Ori).

In the present case as it is clear from the medical reports that the skull was cracked, and head being a vital part, any major injury inflicted there is likely to cause death in natural course of action. In a Supreme Court case, injury was on a region of the head which was a vital part. According to the medical evidence this injury proved fatal. When a person is causing an injury on such a vital part, the intention to kill can certainly be attributed to him.³⁵

In *Re Dorasamy Servai*³⁶, it was held that when an injury to the head sets up septic pneumonia, which results in death, the person, who inflicts the blow on the head, cannot be absolved from the consequences of his crime by saying that his victim dies of pneumonia, and not of the blow on the head, and that, by calling the consequences of an injury a disease, one cannot alter the nature of the consequential results of the injury. If the development or complication is the natural or probable or necessary consequence of the injury and if it is reasonably contemplated as its result, the injury can be said to have caused death.³⁷

Similarly, in the present case, subsequently haemorrhage was caused due to the blow by the accused and whatsoever is the cause of act of accused, i.e. attack on the deceased, accused is to be convicted.

1.3.3 *In arguendo*, the accused had knowledge that his act is likely to cause death of the deceased

It is submitted that, if the court is not satisfied that the accused had the intention to cause such bodily injury, the prosecution would like to further establish that the accused had the knowledge that his act is likely to cause death of the deceased. Any prudent man will have

³⁵ Chahat Khan v. State of Harayana, AIR 1972 SC 2574.

³⁶ In Re Dorasamy Servai, AIR 1944 Mad 157 (TN).

³⁷ RATANLAL & DHEERAJLAL, INDIAN PENAL CODE, (33th Ed. 2011), p. 2621.

the knowledge that damage to skull can be caused by a metal rod and that such damage can result in the death of the person.

In *Sumer Chand v. State of Harayana*, the accused gave only one injury by iron rod on the head of the deceased, it was not clear from the medical evidence as to whether deceased died on account of head injuries. The death of deceased could be well on account of septicaemia, the doctor however did not clarify whether septicaemia was the direct result of injuries, the accused was pinned down for an offence u/s 304, Part II as septicaemia could have been developed because of operation also.³⁸

Moreover, when the injury caused by the *musal* on head of the deceased³⁹ revealed there was no previous enmity but trivial incidents caused hot exchange of words, S. 304, Part II is attracted.⁴⁰ In a case, the accused stabbed deceased with a *Gupti* without an intention to cause his death. It was held that it could be inferred that accused was having knowledge that by causing injury by a *Gupti*, life of a person may come to an end. Hence, it was considered a case of Culpable Homicide.⁴¹

Since, accused in the present case did have the knowledge that his act might result in death of the other person, he must be held liable for Culpable Homicide u/s 299 and should be convicted for the same with appropriate punishment.

1.4 A1 DID NOT ACT IN SELF-DEFENCE

It is humbly submitted that the act of the accused were not in self-defence. Section 96 to 106 of RPC gives authority to a man to use necessary force against an assailant or wrong-doer for

³⁸ Sumer Chand v. State of Harayana, (1998) 2 Crimes 228 (P&H).

³⁹ Ram Kumar Pal v. State of West Bengal, (1999) CrLJ 3868 (Cal).

⁴⁰ Baij Nath v. State of UP, (1994) CrLJ 398 (All).

⁴¹ Lakhani v. State, (2008) CrLJ 1197 (MP).

the purpose of protecting one's own body and property as also another's body and property can claim.⁴² The submissions with regard to the same are made in three limbs: [1.4.1] A1's act was vindictive in nature; [1.4.2] There was no real and imminent apprehension of danger on the accused; [1.4.3] S. 99 is applicable in the present case.

1.4.1 Accused's act was vindictive in nature

All circumstances of the accused and the victim have to be seen for the determination of right of private defence. It should not be pleaded for "vindictive, aggressive or retributive purposes."⁴³ It is clear from the facts of the case that the act of A1 was not an act of self-defence; rather it was done with the clear motive to take revenge from the deceased based on their past confrontation.

1.4.2 No real and imminent apprehension of danger was present on the accused

The Kerala HC stated that "*mere fact that the deceased reached the spot with a weapon, does not give the right of private defence to the accused. And the deceased has reached there, only after the observing that someone had a danger from the accused.*"⁴⁴ Keeping in mind that the accused had given grievous injuries but received none; the right to private defence should be rejected.⁴⁵

Amit in the instant case was acting under his public duty and he only went to the crime scene to tone down the ruckus created by A1 and A2. Moreover, it can be clearly inferred from the facts of the case that there was no act done by the deceased that could cause an apprehension

⁴² RATANLAL & DHEERAJLAL, INDIAN PENAL CODE, (33th Ed., 2011), p. 568.

⁴³ Krishna v. State, AIR 2007 SC 2452, *see also* Naveen Chandra v. State of Uttaranchal, AIR 2007 SC 363.

⁴⁴ Chacko v. State of Kerala, (2001) CrLJ 146 (Ker).

⁴⁵ Hari Singh v. State of Rajasthan, (1997) CrLJ 733 (SC).

of real and ‘*imminent danger*’⁴⁶ in the minds of any reasonable man. Also, even if the police officer had slapped the accused, use of a weapon to attack is not at all proportionate and hence, cannot claim the right of self-defence.⁴⁷

1.4.3 Section 99 is applicable in the present matter

It is submitted to the Court that with knowledge of identity of the police officer, you cannot claim defence if he is exercising in the colour of his duty. Even if not dressed in uniform and only if not clear to the person against whom action is taken that such person is police, then private defence can be claimed.⁴⁸ A1 cannot claim the defence under S. 96 of RPC⁴⁹ as he, in the present case was aware of the fact that deceased was a public servant and the accused were the reason of panic and prevention of which is the duty of any policeman.

Therefore, it is humbly contended before this Hon’ble Court of Session that A1 should not be given the defence of private defence in the present case as his acts were purely vindictive in nature and in the clear violation of law⁵⁰ and he is thus, liable under RPC.⁵¹

2. A1 AND A2 ARE NOT LIABLE FOR THE OFFENCE U/S 186 RPC

It is humbly submitted before this Hon’ble Court of Session that the accused A1 and A2 are liable for the offence under S. 186⁵² of the RPC. It is to be noted that the essential elements which are mentioned by the Court to be present for the offence under this section are: (a)

⁴⁶ 1 RP KATHURIA, SUPREME COURT ON CRIMINAL LAW, 1950-2002, (6th Ed., 2002).

⁴⁷ Memon Yakubhai v. State of Gujarat, (1989) CrLJ 1843 (Guj).

⁴⁸ Emperor v. Abdul Hamim, AIR 1942 All 74.

⁴⁹ § 99 of IPC (No. 45 of 1860); *see also* Poomalai Udayan v. Queen, (1898) 21 Mad 296 (TN).

⁵⁰ *Id* ; *see also* Krishna v. State of UP, AIR 2007 SC 2452.

⁵¹ Arun v. State of Maharashtra, (2009) CrLJ 2065 (SC).

⁵² § 186 of IPC (Act No. 45 of 1860).

“there must be an ‘obstruction’⁵³; (b) the obstruction so caused is caused by the accused; (c) the obstruction caused by accused must be ‘voluntary’⁵⁴; (d) the obstruction so caused is to the ‘public servant’; (e) the obstruction is caused in the functioning of this servant while performing his ‘public duty’⁵⁵.”⁵⁶

It is humbly submitted that ‘obstruction’ means an act which is violent or to show some violence towards the servant.⁵⁷ The term ‘**public servant**’ is clearly defined under S. 21 of the RPC and it is undoubtedly clear to this Court of law that a police officer is also considered to be a public servant.⁵⁸ As per the law, the duty of a police officer is to protect the public health, safety or convenience, to prevent offences, etc.⁵⁹ Police shall not be liable for cognizance of offence if he has acted in discharge of duty.⁶⁰ Hence, the prosecution would like to make two submissions in this regard: **[2.1]** Accused 1 and 2 had caused the obstruction voluntarily; **[2.2]** The deceased was performing his public duty when he was obstructed.

2.1 ACCUSED 1 AND 2 HAD CAUSED THE OBSTRUCTION VOLUNTARILY

It is humbly submitted that the term voluntarily has been described by the RPC as:

⁵³ Limbya Satya v. Emperor, AIR 2009 Bom 385 (Mah); *see also* Shikha Goyal and Anr. v. Employees State Insurance Corporation and Anr., Criminal Petition No. 6009 of 199 (AP).

⁵⁴ BLACK’S LAW DICTIONARY, (10th Ed., 2014).

⁵⁵ King Emperor v. Gajadhar, AIR 1943 Pat 245.

⁵⁶ Udayanath Barik v. State of Orissa, (1989) CrLJ 2216 (Ori).

⁵⁷ Phudki v. State, AIR 1955 All 104 (UP).

⁵⁸ Giridhar Deu Devsekar and Ors. v. State of Goa and Ors., (Criminal Writ Petition No. 33 of 2012).

⁵⁹ § 21 of IPC, (Act No. 45 of 1860).

⁶⁰ Kailashpati Singh v. Rajiv Ranjan Singh and Anr., (Criminal Appeal No. 1492 of 2012) (SC).

“A person is said to cause an effect ‘*voluntarily*’ when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.”⁶¹

It is to be taken into consideration that the term voluntary is not to be taken narrowly. As per the Kerala HC, it was decided that in such cases, whether the accused really meant to cause that effect or not, he is said to have done it voluntarily if the effect is the probable consequence of the cause and the accused cannot argue that he was not sure of such effect.⁶² Moreover, for the act to be voluntary act, the effect and not the volition is to be seen.⁶³ Voluntarily includes both- acts with ‘*intention*’ and with ‘*knowledge*’.⁶⁴

In the present matter, it is evident that A1 had hit the police inspector on his head with a metal rod.⁶⁵ The mere fact that he had intention or knowledge to cause bodily injury is though established in the previous issue, however, the intention to voluntarily restrain the deceased is settled here. Moreover, blowing a metal rod towards a public servant is enough display of use of force. On the other hand, A2 also helped A1 to perform this act and therefore both A1 and A2 must be convicted under S. 186.

2.2 THE DECEASED WAS PERFORMING HIS PUBLIC DUTY WHEN HE WAS OBSTRUCTED

It is humbly submitted that it is an undisputed fact that Mr. Amit was a police inspector and thus a public servant.⁶⁶ Moreover, it is the duty of the police to maintain law and order within

⁶¹ E.K. Chandrasenan v. State of Kerala, (Criminal Appeal No. 422 of 1990), (SC).

⁶² Abdul Majeed v. State of Kerala, (1994) CrLJ 1404 (Ker).

⁶³ 1 SK SARVARIA, RA NELSON’S INDIAN PENAL CODE, (10th Ed., 2008), p. 304.

⁶⁴ *Id.*

⁶⁵ Case Data, ¶ 17.

⁶⁶ *Supra* note 59.

the boundaries of the State. As per the law, police is also to prevent crimes and the commission of public nuisances.⁶⁷ Public nuisance being a cognizable offence, the police has all the right to arrest a person and detain anyone from such performance. Moreover, uniform of a police is just an identity of him/her being a public servant and not a necessity while he is performing his duty.

It is to be taken into consideration that the fact of deceased being a police officer was known to the accused. Moreover, the deceased interfered only after panic was created by the two accused A1 and A2.⁶⁸ Very logically, a person vested with such duty has to prevent the happening of a larger crime and therefore, the deceased had to interfere when noticed the fuss created by the accused due to which the public scattered in panic but was willingly and voluntarily obstructed by the accused by the use of force while deceased performed his public duty of a policeman.⁶⁹

In the light of these arguments, the prosecution pleads that the accused, A1 and A2 must be convicted u/s 186 of RPC.

⁶⁷ § 23 of Police Act (Act No. 5 of 1861).

⁶⁸ I SK SARVARIA, RA NELSON'S INDIAN PENAL CODE, (10th Ed., 2008), p. 17.

⁶⁹ *Id.*

PRAYER

Wherefore, in light of the issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to:

1. **Convict** Abhishek of the offence of committing obstructing a public servant in discharge of public functions and Culpable Homicide not amounting to murder under Sections 186, 304/34 of the Rabat Penal Code.
2. **Declare** a sentence of life imprisonment, and also be liable to fine under Section 186 of the Rabat Penal Code.
3. **Convict** Angad of the offence of committing obstructing a public servant in discharge of public functions, Culpable Homicide not amounting to murder and abetment of a thing under Sections 186, 304 & 107/34 of the Rabat Penal Code.
4. **Declare** a sentence of life imprisonment, and also be liable to fine under Section 186 of the Rabat Penal Code.
5. **Convict** Dushyant of the offence of committing Culpable Homicide not amounting to murder and abetment of a thing under Sections 304 & 107/34 of the Rabat Penal Code.
6. **Declare** a sentence of life imprisonment.

AND/OR

Pass any other order it may deem fit, in the interest of Justice, Equity and Good Conscience.

All of which is most humbly and respectfully submitted.

Place: Mavada

S/d_____

Date:

PUBLIC PROSECUTOR