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

IN THE HONOURABLE COURT OF SESSIONS, MAVADA

S.C. No. 101 of 2016

STATE OF JAGUTAR PROSECUTION

v.

ABHISHEK LEPAT ACCUSED No. 1

ANGAD LEPAT ACCUSED No. 2

DUSHYANT ACCUSED No. 3

**FOR OFFENCES CHARGED UNDER: §186, §304, §107 READ
WITH §34 OF THE RABAT PENAL CODE**

UPON SUBMISSION TO THE HON'BLE SESSIONS JUDGE

WRITTEN SUBMISSIONS ON BEHALF OF THE PROSECUTION

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT
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LIST OF ABBREVIATIONS

§	Section
¶	Paragraph
&	And
AIR	All India Reporter
ALJ	Allahabad Law Journal
Anr.	Another
BLJR	Bihar Law Journal
Bom	Bombay
Bom.LR	Bombay Law Review
CLT	Cuttack Law Times
ed.	Edition
ER.	England Reporter
Etc.	Etcetra
GLT	Gujarat Law Review
H&N	Hurlstone & Norman
HC	High Court
Hon'ble	Honourable
i.e.	That is
IA	Interlocutory Application
IPC	Indian Penal Code
Jhar.	Jharkhand
KB	Kings Bench
Ltd.	Limited
Mad.	Madras
Mr.	Mister
No.	Number
NOC	Number of Cases
NWP	North Western Provinces
Ors.	Others
Pat.	Patna
PC	Privy Council
Pvt.	Private
Re	Reference
SC	Supreme Court
SCC	Supreme Court Cases
Sd/-	Signed
ShimLC	Shimla Law Cases
U.P	Uttar Pradesh
v.	Versus
Vol.	Volume
C&P	Court of Appeal of England and Wal

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MP	Madhya Pradesh
Sec.	Section
Cr.pc	Code of Criminal Procedure
P.	Page
Ibid	Ibidem

MEMORANDUM ON BEHALF OF THE PROSECUTION

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3. INDIAN PENAL CODE, 1860.
4. INDIAN POLICE ACT, 1861

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5. *Biren Tamuli v. State of Assam*, 2010(2) GLT 593
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7. *Emperor v. Parimal Chatterjee*, AIR 1932 Cal 760
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16. *Mahboob Shah v. Emperor*, 721 IA 148 (PC)
17. *Malan v. State of Maharashtra*, AIR 1960 Bom 393
18. *Ouseph Varkey & Anr. v. State of Kerala*, 1964 CriLJ 592
19. *Protima Dutta & Anr. v. The State*, (1977) Cr LJ (NOC) 96 Cal 55
20. *Puna Mahton v. Emperor*, AIR 1932 Pat 31
21. *Queen v. Mohit*, (1871) 3 NWP 316
22. *Radheshyam v. State of U.P.*, (1986) All.L.J.1341
23. *Ramaswami Ayyanger & Ors. v. State of Tamil Nadu*, 1976 AIR 2027
24. *Ramesh Kumar v. State of Chattisgarh*, (2001) 9 SCC 618
25. *Re Lakshmi Narayana Aiyer*, AIR 1918 Mad 738
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30. *Shri Ram v. State of U.P.*, 1975 SCC (3) 495
31. *Som Raj v. State of Himachal Pradesh*, 2007 (2) ShimLC 32
32. *Sonti Rama Krishna v. Sonti Shanti Shree*, (2009) 1 SCC 554 229
33. *State of Maharashtra v. Pandurang Ramji Sanap*, 1971 Bom LR 245
34. *State of Punjab v. Iqbal Singh & Ors.*, 1991 AIR 1532
35. *State v. Babulal Gaurishankar Misar*, AIR 1957 Bom 10
36. *State v. Babulal Gaurishankar Misar*, AIR 1957 Bom 10
37. *Surendra Chauhan v. State of M.P.*, (2000) 4 SCC 110
38. *Sykes v. Director of Public Prosecution*, (1961) 3 All E.R. 33
39. *Virsa Singh v. State of Punjab*, 1958 AIR 465

MEMORANDUM ON BEHALF OF THE PROSECUTION

STATEMENT OF JURISDICTION

The instant case is before this hon'ble Court of Sessions, Mavada, Jagutar. following the committing of the same to this hon'ble Court by the Magistrate. This hon'ble Court has the jurisdiction to try this matter under §177 of CrPC read with §209, CrPC

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

1. Abhishek and Angad were highly involved in organizing protests for Kidhar Lapat and the issue of BN University . They were friends with two girls as well – Tanya and Natasha.
2. Abhishek and Angad used to accompany Tanya and Natasha to the bus stop as there were two boys who used to tease them regularly, They pelted stones at these two boys and they were later, that same day reprimanded by the an Inspector – Mr Amit Chaudhary. Abhishek consulted his friend – Dushyant, who asked abhishek not to be afraid and further encouraged him to kill the police inspector. Abhishek and Angad sat and browsed provisions regarding the legal protection under self defence.
3. On 7th April 2016, The two boys (Dinesh and Peter) were teasing Tanya and Natasha and Abhishek and Angad interviened by pelting stones at them. Inspector Chaudhary, seeing this act of public nuisance decided to control the situation and prevented Abhishek from causing more disturbance. Abhishek, egged on by Angad, in a fit of rage, picked up a metal rod lying around and threw it at Inspector chaudhary which resulted in the Inspector’s death.
4. The police were informed and rushed at the scene and took Mr. Chaudhary to the hospital where he was declared brought dead. The police arrested Abhishek and Angad and a charge sheet was filed which was forwarded to the Magistrate. The Magistrate took cognizance of the matter and committed the case to the Court of Sessions in Mavada, Jagutar.

STATEMENT OF CHARGES

Charge 1

Abhishek Lepat (A1) & Angad Lepat (A2) have been charged under Section 186 of Rabat Penal Code, 1860 for obstructing a Public Servant from discharging his public duty.

Charge 2

Abhishek Lepat (A1), Angad Lepat (A2) & Dushyant (A3) have been charged under Section 304 (I) of Rabat Penal Code, 1860 for causing death by an act with the intention that such an act will cause death.

Charge 3

Abhishek Lepat (A1), Angad Lepat (A2) & Dushyant (A3) have been charged under Section 34 of Rabat Penal Code, 1860 for possessing common intention to commit a criminal act.

Charge 4

Angad Lepat (A2) & Dushyant (A3) have been charged under Section 107 of Rabat Penal Code, 1860 for abetting a crime.

SUMMARY OF ARGUMENTS

Issue 1

WHETHER THE ACCUSED AND CO-ACCUSED OBSTRUCTED THE POLICE INSPECTOR

It is the humble submission of the prosecution that A-1 and A-2 are guilty under §186 of the IPC, which mentions the obstruction of a public servant in discharge of his public duties. Both the accused fulfill the essentials of the section and voluntarily obstructed the police officer.

Issue 2

WHETHER THE ACCUSED ARE GUILTY OF CULPABLE HOMICIDE NOT AMOUNTING TO MURDER

It is the submission of the prosecution that the accused are guilty under Section 304 Part I of the IPC. The accused had an intention of causing death or causing bodily injury as is likely to cause death.

Issue 3

WHETHER THE ACCUSED SHARED COMMON INTENTION IN THE COMMISSION OF THE SAID OFFENCE

It is the submission of the prosecution that the accused are guilty of abetment, to be guilty under this offence, instigation is integral. Instigation necessarily connotes some active suggestion or support or stimulation to the commission of the act itself. Given the factual matrix, it can be conclusively said they all shared common intention.

Issue 4

WHETHER ANGAD AND DUSHYANT COMMITTED THE OFFENCE OF ABETMENT

The test for common intention under section 34 is whether the intention of one was known to the other and shared by the other, it is the submission of the prosecution that the accused shared the common intention which is the basis for this section.

ARGUMENTS ADVANCED

ISSUE-1

**WHETHER ABHISHEK & ANGAD ARE GUILTY OF OBSTRUCTING A PUBLIC SERVANT IN
DISCHARGE OF HIS DUTIES**

It is humbly contended that Abhishek Lepat and Angad Lepat(*hereinafter referred to as A-1 and A-2 respectively*) are guilty of the unlawful offence of obstructing a public servant in discharge of his duties under sec. 186 of the Indian Penal Code, whose essentials are:

- *voluntary obstruction;*
- *of a public servant in discharge of his public functions.*

1.1. A-1 and A-2 voluntarily obstructed the public servant

To constitute offence, physical obstruction is not necessary. Even words can cause obstruction.¹ Threats of violence made in such a way as to prevent the public servant from carrying out his duty might easily amount to an obstruction of the public servant.²

To constitute “obstruction”, it is not necessary that there should be actual *criminal force*³.

The word ‘obstruction’ connotes some overt act in the nature of violence or show of violence.⁴

The facts state the following in regard to the offence under Sec. 186 of IPC:

¹ 1966 BLJR 300; *Sykes v. Director of Public Prosecution*, (1961) 3 All E.R. 33

² 1937 A.L.J. 1344, Law Lexicon, Reprint Edition 1987.

³ Sec 350, IPC

⁴ *State v. Babulal Gaurishankar Misar*, AIR 1957 Bom 10

- A-1 engaged in a fracas with the deceased.⁵
- The A-2 shouts to the accused, "*he is going to shoot you, quickly escape.*"⁶
- The A-1, in a fit of rage, runs and takes a rod⁷ lying down in the auto garage next to the bus stop and throws it at the deceased, thereby killing him.⁸
- A-2(DW 2) in his confessional statement, says that he tried stopping the inspector as the accused went and picked up a rod and threw it at the inspector.⁹
- Tanya(DW 4), saw the accused and the co-accused struggle with the cop and the accused hitting the inspector with a rod.¹⁰
- Jatin(PW 6) saw both the accused and the co-accused struggling with the cop, and the accused ran towards his auto garage and picked up a rod and hit the inspector.¹¹

Therefore, circumstantial evidences are evident to the fact that A-1 and A-2 voluntarily obstructed the police inspector in discharge of his duties, the accused using *criminal force* which resulted in the inspector's death. A-1 has, exceeded the requirements of the section to constitute even mere '*obstruction.*'

1.2. The police officer was discharging his duty in a lawful manner

As per the facts, and the confessional statements of DW 1¹², DW 2¹³ and witness statements of Tanya(DW 4)¹⁴ and Natasha(DW 5)¹⁵, A-1 and A-2 were pelting stones at

⁵ Case Details, P.3

⁶ *Ibid*

⁷ Exhibit 2, Case Details, P. 4 & 5

⁸ *Ibid*

⁹ Annexure 5, Case Details, P.16

¹⁰ *Ibid*, P. 17

¹¹ *Ibid*

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Dinesh and Peter, which created a situation of chaos in the vicinity, the people standing at the bus stop started running in panic, which is when the police inspector interjected.¹⁶

*"Every police officer may interpose for the purpose of preventing, and shall, to the best of his ability, prevent, the commission of any cognizable offence."*¹⁷

*" It shall be the duty of every police- officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority; to collect and communicate intelligence affecting the public peace; to prevent the commission of offences and public nuisances; to detect and bring offenders to justice and to apprehend all persons whom he is legally authorized to apprehend, and for whose apprehension sufficient ground exists."*¹⁸

It must be understood that a police officer is never off duty.¹⁹ It was therefore the duty of the police inspector, to protect the public which was being affected by the unlawful actions of A-1 and A-2, he rightly discharged it, in proper exercise of his authority.

Therefore it is submitted before the Hon'ble Court that the circumstantial evidence make it clear that the A-1 and the A-2 did voluntarily obstruct a public servant in discharge of his public functions as he only interjected to bring the situation of public nuisance under control.

¹² Annexure 5, Case Details, P. 14

¹³ *Ibid*, P.15

¹⁴ *Ibid*, P.16

¹⁵ *Ibid*, P.17

¹⁶ Case Details, P.3

¹⁷ Sec 149, Cr.P.C

¹⁸ Sec 23, Indian Police Act 1861

¹⁹ Sec 22, Indian Police Act 1861

ISSUE-2

**WHETHER THE ACCUSED ARE GUILTY OF CULPABLE HOMICIDE NOT AMOUNTING TO
MURDER**

It is humbly contended that A-1, A-2 and Dushyant(*hereinafter referred to as A-3*) are guilty of the unlawful offence of committing culpable homicide not amounting to murder under sec. 304 part I r/w sec. 34 of the IPC:

If the act by which death is caused is done with intention of causing death or such bodily injury as is likely to cause death, the punishment is imprisonment for life, or imprisonment of either description for a term which may extend to ten years and fine.²⁰

2.1 Whether there was an intention of causing death of the deceased

A-1 and A-2 were pelting stones at the bikers which created a chaotic situation in the vicinity, with people running in panic. The inspector, in lawful discharge of his duty to protect the public, confronted A-1 and A-2.

According to the confessional statements of DW 1 and DW 2, both recognised the deceased as a police officer²¹ despite the fact that he was not in his uniform.²² They also dug up details about the deceased after their prior confrontation with the inspector²³ and also browsed the internet to look up legal protection under self defence. Hence, it is reasonable for this Hon'ble Court to assume that A-1 and A-2 were aware of the exception

²⁰ Ratanlal and Dhirajlal, *The Indian Penal Code*, P. 1657, (33rd Ed 2011)

²¹ Annexure 5, Case Details, P.15 & 16.

²² Case Details, P.3

²³ Case Details, P.2

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of no private defence against a public servant and also, they were aware of the police inspector's recognition and despite that, they killed him.

Under sec. 304 Part I, even if there is no implicit "*intention to kill*", it is enough that the accused had an "*intention of causing a bodily injury likely to cause death.*"²⁴ The time factor and the spontaneity of the action must be taken into account. The accused in a case was convicted on the grounds that by his action of stabbing the deceased with full force implies his firm intention of causing death.²⁵

A-1, in a fit of rage, ran and picked up the iron rod and threw it at the inspector with all his might. The time taken by him to run and pick up the rod proves that he ran towards the rod with full intention to pick it up, and when he threw it at the inspector, his intention of killing him or at least causing bodily injuries likely to cause death is proved.

*"If a man deliberately strikes another on the head with a heavy log of wood or an iron rod or even a lathi so as to cause a fracture of the skull, he must, in the absence of any circumstances negating the presumption, be deemed to have intended to cause the death of the victim or such bodily injury as is sufficient to cause death."*²⁶

"But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness or intended serious consequences, is neither here or there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness but whether he intended to inflict the injury in question

²⁴ *Abdul Nawaz v. State of West Bengal*, AIR 2012 SC 1951

²⁵ *Biren Tamuli v. State of Assam*, 2010(2) GLT 593

²⁶ *Som Raj v. State of Himachal Pradesh*, 2007 (2) Shim LC 32

and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."²⁷

Therefore, it is submitted before this Hon'ble Court, that circumstantial evidence and other relevant cases and laws prove that A-1, A-2 and A-3 are guilty of an unlawful offence under sec. 304 Part I of the IPC.

2.2 Whether A-2 & A-3 can be held guilty under § 304 Part I

After their first confrontation, both A-1 and A-2 even consulted A-3 about the deceased, who, in a fit of rage, declared, "*iski yeh himmat, salley ko mar dalo, kam se kam hamare neta toh khush honge.*"²⁸ It is the submission of the prosecution that both A-2 and A-3 held common intention of committing the crime as elucidated in *Issue 3* and A-2 abetted the offence as mentioned under *Issue 4*.

2.3 Whether Right to Private Defence can be employed

It is also humbly submitted before this Hon'ble Court, that A-1 had no *right to private defence*²⁹ since he had acted against the actions of a police inspector who was lawfully discharging his duty. Sec. 99 specifically says that there is no right of private defence against an act which does not reasonably cause apprehension of death or grievous hurt, if done or attempted to be done on the direction of a public servant acting in good faith under the colour of his office. The protection extends even to acts which will not be strictly justifiable in law.³⁰

²⁷ *Virsa Singh v. State of Punjab*, 1958 AIR 465

²⁸ Case Details, P.2

²⁹ Sec. 97, IPC

³⁰ *Kanwar Singh v. Delhi Administration*, AIR 1965 SC 871; *Dalip*, (1896) 18 All 246, 252; *Kesho Ram v. Delhi Administration*, AIR 1974 1158; *Ouseph Varkey & Anr. v. State of Kerala*, 1964 CriLJ 592

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The words '*not strictly*³¹ *justifiable by law*³² seem to point to cases where there is an excess of jurisdiction, as distinct from a complete absence of jurisdiction, to cases where the official has done wrongly what he might have done rightly not to cases where the act could not possibly have been done rightly.³³

ISSUE-3

WHETHER THE ACCUSED SHARED COMMON INTENTION IN THE COMMISSION OF THE SAID

OFFENCE

The said accused have been charged for a criminal act done in furtherance of a common intention.³⁴

The said offence as mandated by Section 34 has certain key elements as stated in the case of *Surendra Chauhan v. State of M.P.*³⁵, “*apart from the fact that there should be two or more accused, two factors must be established - (i) common intention; and (ii) participation of the accused in the commission of the offence. If a common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability. A person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring*

³¹ *Jograj Mahato v. Emperor*, AIR 1940 Pat. 696

³² *Puna Mahton v. Emperor*, AIR 1932 Pat 315

³³ Mayne, John, *Commentaries on the Indian Penal Code*, (12th Ed 2008)

³⁴ Sec 34, IPC

³⁵ (2000) 4 SCC 110; *Kripal Singh v. State of U.P.*, AIR 1954 SC 706

about a particular result. Such consensus can be developed at the spot and thereby intended by all of them.”

Here, all the said common intention and abetment will be inferred with respect to the act of culpable homicide and S186 IPC as committed by A-1.

3.1 A-1, A-2 and A-3 shared a common intention

*An accused sharing the common intention is as guilty of committing the crime as the man who gave the fatal blow.*³⁶

The essence of Sec 34 IPC is simultaneous consensus of the minds of persons participating in the 'criminal action' to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them.³⁷

Here we see that A-1 and A-2 looked up the various clauses of right to private defense and were ready to kill the inspector in their next confrontation. A-2's written submission also says that he accosted the inspector in a bid to let A-1 escape.³⁸ Thus, a predetermined plan to kill the inspector existed and it was executed in the heat of the moment. Also, the act of A-2 stopping the Inspector by accosting him was the abetment of the Sec 186 IPC offence that has been discussed by the prosecution earlier. It may be safely said that common intention could have also developed instantly. This argument stands in addition to the argument that the said intention developed beforehand. We thus have conclusive proof that says that A-2 had shared the said common intention with A-1.

³⁶ *Rishideo v State of UP*, AIR 1955 SC 331

³⁷ *Ramaswami Ayyanger & Ors. v. State of Tamil Nadu*, 1976 AIR 2027

³⁸ Annexure 5, Case Details, P.16

The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstance is that the said plan must precede the act constituting the offence. If that were so, the Court can convict a person³⁹

Here we see that the said accused i.e. A-3 and A-2 shared the same common hatred for the deceased. A-3 urged the said accused to kill inspector and assured the said accused of political protection. He thus shared the common intention to kill the inspector as stated in the fact sheet. This has helped us establish the common intention element as mandated by the guidelines in *Mahboob Shah v. Emperor*.⁴⁰

3.2 Whether the participation of the accused in the commission of the offence influences the charge in any way

In *Barendra Kumar Ghosh v. King Emperor*⁴¹, the court held that, '*they also serve who only stand and wait*'

In the case of *Reg. v. Cruse*⁴², the court evolved the doctrine of joint liability and held that each of the members of the group were equally responsible for the blow, whether one actually struck it or not. Here, it is seen that the said accused A-2 participated directly in the commission of the said offence. Here, A-2 fills both the said criteria for attracting S 34. The second criteria *i.e* the participation in the commission of the said offence becomes irrelevant if common intention has been proved and this where A-3 may be held guilty. Even though A-3 had not participated in the direct commission of the offence, he

³⁹ *Krishna Govinda Patil v State of Maharashtra*, AIR 1963 SC 1413

⁴⁰ 721 IA 148 (PC)

⁴¹ (1925) 27 BomLR 148

⁴² 1838 C&P 541

aided and instigated A-1 and A-2 in its commission and may thus be held liable under S.34 having satisfied its major criteria. Also, as stated in *Lallan Chaudhury v. State of Bihar*⁴³, “*Mere distancing from the scene cannot absolve the accused as the requirement of the statute is sharing common intention*”. A-3 therefore, cannot be acquitted on the grounds that he did not take part in the offence. In *Issue 4*, the Prosecution will establish that he actively suggested the commission of an offence which is abetment in itself.

ISSUE-4

WHETHER ANGAD AND DUSHYANT COMMITTED THE OFFENCE OF ABETMENT

It is humbly contended that Angad Lapat and Dushyant, are not guilty of abetment under sec. 107 of the IPC, whose essential ingredients are:

- *that the accused aided, abetted, counselled or procured the commission of the principal offence;*
- *that the principal offence was in fact committed; and*
- *that he had the intent to aid or encourage the commission.*⁴⁴

The words aid and abet may be used together to charge a person who is alleged to have participated in a crime otherwise than as principal or as accessory after the fact.⁴⁵

An act of abetment may take place in one of the three ways:

- *Instigation*
- *Conspiracy*

⁴³ AIR 2006 SC 3376

⁴⁴ Cross and Jones, *Introduction to Criminal Law*, para 19, p.387, (9th Ed 1976)

⁴⁵ *Re Smith*, (1858) 3 H&N 227; *Ferguson v. Weaving*, (1951) 1 KB 814;

- *Intentional Aid*⁴⁶

*“To constitute the offence of abetment it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused” (Explanation 2, Sec 108)*⁴⁷

*“It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.” (Explanation 5, Sec 108)*⁴⁸

Another aspect that must be considered is that abetment as defined in Section 108 IPC has certain essentials as elaborated in *Emperor v. Parimal Chatterjee*⁴⁹

“ (1) There must an abettor

(2) He must abet, and

(3) The abetment must be an offence or an act which would be an offence, if committed by a person capable in law of committing the offence with the same intention and knowledge as that of the abettor”

4.1 Whether A-2 abetted A-1 in the commission of culpable homicide not amounting to murder

⁴⁶ *Malan v. State of Maharashtra*, AIR 1960 Bom 393

⁴⁷ Ratanlal and Dhirajlal, *The Indian Penal Code*, P.567, (33rd Ed. 2011)

⁴⁸ *Ibid*, P.568

⁴⁹ AIR 1932 Cal 760

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Halsbury lays down the following in regard to presence of the abettor during the commission of the offence:

*"Mere presence at the commission of the crime is not enough to create criminal liability nor is it enough that a person is present with a secret intention to assist the principal should assistance be required. Some encouragement or assistance must have been given to the principal either before or at the time of the commission of the crime with the intention of furthering its commission."*⁵⁰

As per the facts of the case, during the fracas between A-1 and the inspector, A-2 shouted to A-1, *"he is going to shoot you, quickly escape."*⁵¹ to which A-1 reacted by picking up an iron rod⁵² and throwing it at the inspector causing his death.

A person is said to instigate another to an act when he actively suggests or stimulates him to the act by any means or language direct or indirect whether it takes the form of express solicitation or of hints, insinuation or encouragement.⁵³

*"In order to constitute abetment, the abettor must be shown to have 'intentionally' aided to commission of the crime. Mere proof that the crime charged could not have been committed without the interposition of the alleged abettor is not enough compliance with the requirements of Section 107. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of the crime....."*⁵⁴

⁵⁰ *Halsbury's Laws of England*, Vol. 11, para 44, p.35, (5th Ed 2008)

⁵¹ Case Details, P.3

⁵² Exhibit 2, Case Details, P.4

⁵³ *Baby John v State*, 1953 CrLJ 1273 Bom 44

⁵⁴ *Shri Ram v. State of U.P.*, 1975 SCC (3) 495

And to sustain conviction for abetment it is not necessary that the act abetted must be committed, abettor's guilt depends upon the nature of the act abetted.⁵⁵

A-2 may be charged effectively under this Section as:-

- He shared the said common intention as proved earlier and conspired to commit the said offence with A-3 and A-1. This is visible clearly through the excerpts from the browsing history and written statements.
- He instigated A-1 by mouthing the words that caused him to not only obstruct a public servant in discharge of his public function but also lead him to throw the said rod at the inspector.
- He facilitated the commission of the said offence by accosting the inspector giving A-1 enough time to escape, grab the said rod and hurl it at the deceased. A-2 thus actively participated in the commission of the offence by facilitating it and being at the scene of crime. In addition to this A-2 satisfies all the three criteria as laid down in *Emperor v. Parimal Chatterjee*.

4.2 Whether A-3 is guilty of abetting A-1 and A-2 in the commission of the offence

Instigation means to goad or urge forward or to provoke, incite, urge or encourage to do an act.⁵⁶ It is the process of an active stimulation.⁵⁷

Now, as the facts of the case go, A-1 and A-2, after being confronted by the inspector on March 30, 2016, went to A-3 for advice. A-3 clearly and expressly suggested that they should both kill the inspector by saying, "*iski yeh himmat, salley ko mar dalo*,

⁵⁵ *Jamuna Singh v. State of Bihar*, AIR 1967 SC 553; *State of Maharashtra v. Pandurang Ramji Sanap*, 1971 Bom Lr 245

⁵⁶ *Supra*, n.67

⁵⁷ *Re Lakshmi Narayana Aiyer*, AIR 1918 Mad 738

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kam se kam hamare neta to khush honge"⁵⁸ He also added, "You are a hero yourself and you know what to do and how to defend yourself."⁵⁹

A-1 admits that he was given the advice of killing the deceased by A-3 in the telephonic conversation 1(7 April 2016)⁶⁰ and telephonic conversation 2(7 April 2016).⁶¹ However, both A-2 and A-3 deny this claim of A-1 in the aforementioned telephonic conversations and telephonic conversation 3(7 April 2016).⁶²

We see here that A-3:-

- A-3 actively suggested and thereby instigated A-1 and A-2 to commit the said offence. The instigation by words would amount to an offence as it was an approval that lead to an instigation here. This was elaborated in the case of *Queen v. Mohit*⁶³ and *Protima Dutta*⁶⁴
- He conspired with both A-1 and A-2 to commit the said offence by actively instigating them and promising them political protection and favour thereby satisfying the condition as stated in Explanation 5 of Section 108 IPC.
- According to Section 108 Explanation 2 A-3 may be convicted irrespective of whether the said offence was committed. His common intention and mouthing of instigating words here are enough to indict him under the Section 107

⁵⁸ Case Details, P.2

⁵⁹ *Ibid*

⁶⁰ Exhibit 5, Case Details, P.7

⁶¹ *Ibid*

⁶² *Supra*, n.15, p.8

⁶³ (1871) 3 NWP 316

⁶⁴ (1977) Cr LJ (NOC) 96 Cal 55

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It is therefore humbly submitted that A-2 and A-3 are guilty of abetment under sec.
107 of the IPC.

PRAYER

Wherefore in the light of issues raised, arguments advanced and authorities cited, it is humbly requested that this Court may be pleased to adjudge and adjudicate that:

1. Accused 1, Abhishek Lepat, is guilty of offences under § 304, 186 r/w §34 of Indian Penal Code, 1860 and hence be **convicted**.

2. Accused 2, Angad Lepat, is guilty of offences under § 304, 186, §107 r/w §34 of Indian Penal Code, 1860 and hence be **convicted**.

3. Accused 3, Dushyant, is guilty of offences under § 304, 107 r/w §34 of Indian Penal Code, 1860 and hence be **convicted**.

And/or

Pass any order that it may deem fit in the interest of justice, equity, and good conscience.

All of which is most respectfully submitted

Place: Mavada, Jagutar

Sd/_____

Date: September 24, 2016

COUNSEL FOR PROSECUTION