
SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION, 2016

Team Code -

Before

The Hon 'ble Court of Sessions, Mavada

State of Jagutar

v.

Abhishek, Angad & Dushyant

In

S.C. No. 101 of 2016

CASE CONCERNING THE TRIAL U/S 304, R/W § 34, 107 & 186 OF THE RABAT PENAL CODE

[MEMORIAL ON BEHALF OF THE PROSECUTION]

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TABLE OF ABBREVIATIONS

§	Section
¶	Paragraph
A.I.R.	All India Reporter
All.	Allahabad High Court
B.P.C.	Bharat Penal Code
Cal.	Calcutta High Court
Cr. L.J.	Criminal Law Journal
Cr. P.C.	Code of Criminal Procedure
Del.	Delhi High Court
DW	Defence Witness
ed.	Edition
Guj.	Gujarat High Court
Mad.	Madras High Court
Ori.	Orissa High Court
P.	Page Number
PW	Prosecution Witness
Raj.	Rajasthan High Court
S.	Section
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
v.	Versus

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S T A T E M E N T O F J U R I S D I C T I O N

THE HON'BLE COURT HAS JURISDICTION TO TRY THE INSTANT MATTER UNDER § 177 R/W § 184

AND § 209 OF THE CODE OF CRIMINAL PROCEDURE, 1973.

S T A T E M E N T O F F A C T S

1. Abhishek and Angad are Post Graduate students at Presidency College, Mavada. Abhishek, the leader of the Union, organized two protests at the college and Angad took part in them too. The union is affiliated to Collective Party of Rabat (C.P.R.).
2. Tanya and Natasha, students of under graduate course at Presidency College and members of the Union, complained to Abhishek that two boys regularly teased them. Therefore, Abhishek and Angad mostly accompanied them in the evening to the bus stop to ensure that they safely boarded the bus and also chased away the two boys twice, on 28th and 30th March 2016 by throwing stones at them. They found that they were Dinesh, who was the son of an MLA of the ruling party, and his friend Peter.
3. On 30 March 2016, Inspector Chaudhary came and warned Abhishek and Angad to mind their own business. They then contacted Mr. Dushyant Liko, a local leader who told them to not be afraid as the party would support them. They did an internet search about the background of Inspector Chaudhary, Dinesh, Peter and self-defence.
4. On April 7, 2016, Dinesh and Peter came near the bus stop. Abhishek and Angad started pelting stones at them. Suddenly, Inspector Chaudhary came from behind and slapped Abhishek and during the fracas, he put his hand on his belt showing the gun holster. Angad shouted at Abhishek to quickly escape as the Inspector was going to shoot him. Abhishek ran and took a rod that was lying down in the auto garage next to the bus stop and threw it at the inspector. The inspector got hit on the head and fell and got hit on the head again by the stump of a tree and died. Abhishek & Angad were arrested for the murder of Inspector Amit Chaudhary. On completion of the investigation, the Police forwarded the Final Report to the Magistrate's Court. The Court took cognizance of the Report and thereafter committed the case to the Court of Sessions in Mavada, Jagutar.

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S T A T E M E N T O F C H A R G E S

- Abhishek Lepat has been charged under § 186 of R.P.C. for obstructing public servant in discharge of public functions and under § 304 read with § 34 of R.P.C. for the offence of culpable homicide not amounting to murder.
- Angad Lepat has been charged under § 186 of R.P.C. for obstructing public servant in discharge of public functions and under § 304 read with § 34 of R.P.C. for the offence of culpable homicide not amounting to murder and for abetment under § 107 of the R.P.C.
- Dushyant Liko has been charged under § 107 of R.P.C. for abetment of murder and under § 304 read with § 34 of R.P.C. for the offence of culpable homicide not amounting to murder.

S U M M A R Y O F A R G U M E N T S

1. ABHISHEK IS LIABLE FOR OFFENCE OF CULPABLE HOMICIDE NOT AMOUNTING TO MURDER UNDER § 304 OF R.P.C

It is humbly contended that Abhishek is liable for culpable homicide not amounting to murder under § 304 of R.P.C. The accused will be held liable under this section if the act by which the death is caused is done with the intention of causing death, or of such bodily injury as is likely to cause death or if the act is done with the knowledge that it is likely to cause death, or of such bodily injury as is likely to cause death both of which are proved beyond reasonable doubt in the present case.

Also, in the present matter the accused cannot plead necessity as it requires the act to be done without criminal intention and in good faith which clearly lacks in the present case. The testimony of the Prosecution Witnesses in the instant matter also stands credible and trustworthy. The right to private defence is also not applicable in the present matter as S. 99 is applicable.

2. ABHISHEK AND ANGAD VIOLATED § 186 OF THE RABAT PENAL CODE, 1860.

The counsel for the defence submits that Abhishek and Angad are guilty for obstructing a public servant in discharge of public functions under § 186 R.P.C. The requisites of this section are ‘voluntary’, ‘obstructs’, ‘public servant’ and ‘in discharge of his public function’ all of which are fulfilled in the present case. As § 22 of The Police Act, 1861 holds that a police officer is always on duty therefore it can be construed that the inspector was discharging his public functions when he was killed. Therefore in the present case Abhishek and Angad are guilty for obstructing a public servant in discharge of public functions under § 186 R.P.C.

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3. ABHISHEK, DUSHYANT AND ANGAD ARE LIABLE UNDER § 304 R/W § 34 OF R.P.C

It is humbly submitted before the Hon'ble Court of Sessions, Mavada that Abhishek, Dushyant and Angad are liable under § 304 r/w Sec 34 of R.P.C. because of the existence of a common intention. § 34 of the R.P.C include the commission of an illegal act by several persons and that such an act was done in the furtherance of the common intention. A mere existence of a pre-arranged plan that the offense be conducted is enough to satisfy the element of common intention. In the present matter the conduct of the two accused relates to the fact that they had common intention to kill the inspector.

4. WHETHER DUSHYANT AND ANGAD ARE LIABLE FOR ABETMENT UNDER SECTION 107 OF THE R.P.C

It is humbly submitted before the Hon'ble Court of Sessions, Mavada, that Angad Dushyant are guilty for abetting the offence of culpable homicide not amounting to murder under § 107 of the R.P.C. Abetment constitutes of instigating, engaging in a conspiracy and intentionally aiding a person to commit a crime. It is humbly contented that the principal offence was in fact committed; and that the abettor had intention to encourage the commission all of which are successfully proved in the present case.

A R G U M E N T S A D V A N C E D

**1. ABHISHEK LEPAT IS LIABLE FOR CULPABLE HOMICIDE NOT AMOUNTING TO MURDER
UNDER SECTION 304 OF R.P.C**

According to Justice Ganguly “*a miscarriage of justice which may arise from the acquittal of the guilty is not less than from a conviction of an innocent.*” The prosecution most respectfully submits before this Hon’ble court that the facts and circumstances of the present case and the conduct of the accused, it clearly pinpoints to the guilt of the accused.

A perusal of § 304 manifests that the following will form the basis for holding the accused persons liable for the charge of culpable homicide not amounting to murder:

- If the act by which the death is caused is done with the intention of causing death, or of such bodily injury as is likely to cause death.
- If the act is done with the knowledge that it is likely to cause death, or of such bodily injury as is likely to cause death.

1.1 THERE WAS AN ACT BY ABHISHEK WITH THE INTENTION OF CAUSING DEATH

Intention to kill a person must be determined having regard to the factual scenario involved in each case.¹ Any fact is relevant which shows or constitutes a motive or preparation for any relevant fact.²

In the present case, the following chain of events elucidate both *mala fide* intention and *motive* as well as intention of Accused No. 1 to commit the aforesaid offence:

The Accused had an intention to cause murder

Whenever a person hits another on a vulnerable part of the body and death occurs as a result it is a basic presumption that the accused should have known the intended result of his act

¹ *Benjamin v. State*, (2008) 3 SCC 745

² Section 8, *Indian Evidence Act*, 1872

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and an offence of Murder is committed.³ The intention to kill can be inferred from the death and nature of the injuries caused to the victim.⁴ In the present case the act of the accused to throw the iron rod at the head which is a sensitive area of the body shows that he had intention to kill the inspector.

The Accused had motive to kill

§ 8 of the Rabat Evidence Act, 1872 stipulates that any fact is relevant which shows or constitutes motive or preparation for any fact in issue or relevant fact. Thus, previous threats or altercations between parties are admitted to show motive.⁵ It is further pertinent to note that if there is motive in doing an act, then the adequacy of that motive is not in all cases necessary. Heinous offences have been committed for very slight motive.⁶

In view of the above stated judgments, the fact can be directly imputed that the accused had the motive to kill the victim. The accused was an ambitious young man who was looking for a career in politics and after the aid and advice of Dushyant or the co–accused he was motivated to rise in the eyes of the party leader. Therefore, he went against the law in pursuance of his interest.

Arguendo,**Absence of motive is irrelevant.**

Assuming for the sake of argument that the accused had no motive, it is humbly contended that absence of motive is no ground for dismissing the case. Motive is immaterial so far as the

³ (1951) 3 Pepsu LR 635

⁴ *Laxman v. State of Maharashtra*, AIR 1974 SC 1803

⁵ *Son Lal v. State of Uttar Pradesh*, AIR 1978 SC 1142, *Chhotka v. State of WB*, AIR 1958 Cal 482

⁶ *State v. Dinakar Bandu* (1969) 72 Bom LR 905

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offence is concerned, and need not be established⁷ as the mere existence of motive is by itself, not an incriminating circumstance and cannot take the place of a proof.⁸

Therefore, absence of proof of motive, does not break the link in the chain of circumstances connecting the accused with the crime, nor militates against the prosecution case and is not fatal as a matter of law.⁹ When the circumstantial evidence on record is sufficient to prove beyond any doubt to prove that it was the accused and no one else, who intentionally caused the death of the accused then, motive of the crime need not be proved,¹⁰ as in the current case.

However, it was held in *Bikau Pandey v. State of Bihar*¹¹ that absence of motive is of no consequence and pales into insignificance when direct evidence establishes the crime. The Direct evidence is of significance in the present case.

In *Ranganayaki v. State by Inspector of Police*¹², it was held that the mere fact that prosecution failed to translate mental disposition of the accused into evidence does not mean that no mental condition existed in the mind of the assailant.

1.2 THE ACT WAS DONE BY ABHISHEK WITH THE KNOWLEDGE THAT IT IS LIKELY TO CAUSE DEATH

It is humbly submitted that in the present case scenario, Abhishek had the knowledge that the act of throwing the iron rod is likely to cause the death of the inspector.

⁷ Ratanlal and Dhirajlal, *The Indian Penal Code*, LexisNexis, 33rd Ed. (2011)

⁸ *State of Punjab v. Sucha Singh*, AIR 2003 SC 1471

⁹ *Mulakh Raj v. Satish Kumar*, AIR 1992 SC 1175

¹⁰ *State of Madhya Pradesh v. Digvijay Singh*, 1981 Cri. LJ 1278 (SC)

¹¹ *Bikau Pandey v. State of Bihar* (2003) 12 SCC 616; *Barikanoo v. State of Uttar Pradesh*, (1997) 1 Crimes 500 (All)

¹² *Ranganayaki v. State by Inspector of Police*, AIR 2005 SC 418

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In Exhibit 3A, it is evident that the distance from which the rod was thrown and the place where the inspector was standing was very close. In such proximity any prudent man can reasonably foresee that his actions will eventually result in the death of the person when the weapon in hand is so lethal. A conviction under Part II of § 304 of R.P.C read with § 34 is legal and valid. Part II of this section can be read together with § 34 notwithstanding that Part II speaks only of knowledge while § 34 deals with intention.¹³ Therefore, the test of prudence as according to the line of thought of a reasonable man points to the guilt of the accused.

1.3 ACCUSED CANNOT PLEAD THE DEFENCE OF NECESSITY

It is most respectfully submitted that the present case will not fall under any of the general exceptions in the R.P.C and therefore plea of necessity cannot be entertained. The word ‘necessity’ as it is customarily used, has a special meaning. The immunity from criminal liability under § 81 of R.P.C will be available only when an offence is committed without any criminal intention, to cause harm and in good faith and if such offence is committed for the purpose of preventing or avoiding other harm to person or property.¹⁴ But in the present matter as there was intention to kill to the inspector, the defence is not applicable.

1.4 TESTIMONY OF THE PROSECUTION WITNESSES IN THE INSTANT MATTER STANDS CREDIBLE AND TRUSTWORTHY

The version of prosecution witness cannot be doubted upon, as it has been corroborated with the forensic and the post-mortem reports. The statement of the auto garage worker, Jatin, which stated that Abhishek picked up the rod and hit it on the ground before throwing it, should not be discarded *per se*. The statement shows the intention on part of Abhishek to kill Inspector Chaudhary which forms an incriminating evidence against Abhishek.

¹³ *Afrhim Sheikh & Ors. v. State of West Bengal*, AIR 1964 SC 1263

¹⁴ *Dendati Sannibabu v. Varapureddi Sannibabu*, (1959) Cr LJ 167 (AP).

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1.5 THE ACCUSED CANNOT AVAIL THE RIGHT TO PRIVATE DEFENCE

In the given context, the accused claims to avail the right of private defence as per § 96 to § 106, R.P.C which may extend to causing death for the purpose of defending the body or property of another person. However, the principle that there must be an imminent danger giving the signal to act in exercise of the right of private defence¹⁵ i.e. the necessity must be a present necessity, whether real or apparent¹⁶ and thus, private defence does not include the right to launch an offensive attack.¹⁷

A right to defend does not include a right to launch an offensive, particularly when the need to defend no longer survived.¹⁸ In the instant matter it is pertinent to note that Accused 1 launched an attack on the Inspector with an iron rod. Just because one circumstance exists amongst the various factors, which appears to favour the person claiming right to self-defence, does not mean that he gets the right to cause the death of the other person. Even the right to self-defence has to be exercised directly in proportion to the extent of aggression.¹⁹

In the present matter it is only being alleged by the defence that there was a reasonable apprehension that the inspector was going to shoot them whereas there was no act by the inspector that can point out to it, like taking out the gun from the holster. The only thing that is being argued upon is that the inspector was going reaching out for his holster which in all probabilities is fabrication on part of the defence to make their case strong. The right to private defence should not be allowed to be pleaded or availed of as pretext for a vindictive,

¹⁵ *Hari Singh v. State of Rajasthan*, AIR 1997 SC 1505

¹⁶ *Bhanwar Singh v. State of MP*, (2008) 16 SCC 657

¹⁷ *Shajahan v. State of Kerala*, (2007) 12 SCC 96

¹⁸ *Babulal Bhagwan Khandare v. State of Maharashtra*, AIR 2005 SC 1460

¹⁹ *Mano Dutt v. State of U.P.*, JT 2012 (2) SC 573

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aggressive or retributive purpose.²⁰ But in the present matter it is being used as a tool to shadow the retributive as well as vindictive motive because of which Abhishek hit the inspector.

§ 99 of R.P.C is applicable in the present matter

In the instant matter it is pertinent to note that § 99 of the R.P.C. is applicable. It states that there is no right of private defence against an act which does not reasonable cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by a public servant acting in good faith under colour of his office, though that act, may not be strictly justifiable by law.

To avail the benefit of the provisions, the act done or attempted to be done by a public servant must be done in good faith and under the colour of his office. Good faith plays a vital role under this section. Good faith does not require logical infallibility but due care and caution as defined under § 52 of the code.²¹The only exception to it is that the act of the public servant should not cause reasonable apprehension of death or of grievous hurt.

In the present matter, it is imperative to note that Abhishek had no right to defend himself as Inspector Chaudhary was acting in good faith under the colour of his office. Even if it contested that the actions of the inspector were not justified as is being alleged, it is provided in the code that there can be laxity on that part as the actions by the public servant will be legal though they may not be strictly justifiable by law.

It is evident from the events that had transpired that Inspector Chaudhary was acting in pursuance of maintaining law and order. When he saw that there was disruption in the peace and tranquillity near the bus stand as people were running helter-skelter because of the

²⁰ *Munney Khan v. State of Madhya Pradesh*, AIR 1971 SC 1491

²¹ *Textbook on the Indian Penal Code*, Universal Law Publishing, 2009 Pg 185.

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actions of the accused, he went to restore the law and order and thus acted in good faith under the colour of his office as according to § 22 of the Police Act 1861, a police officer is considered to be always on duty. Although his action might not be strictly justifiable by law but the fact that his actions were in good faith connote to the fact that there was no right to private defence that was available to the accused.

In addition to this, explanation 1 of the section states that there will be right to private defence available unless the person knows or has reason to believe that the person doing the act is a public servant. In the matter at hand, the accused clearly knew that Inspector Chaudhary was a police officer as he had had an earlier confrontation with him and also his internet search indicates that he had knowledge of the fact of Amit Chaudhary was a police inspector.

Therefore all the corroborative facts indicate that the right to private defence was not available to the accused as he knew that the person was a public servant who was acting in good faith under the colour of his office.

2. ABHISHEK AND ANGAD ARE GUILTY FOR OBSTRUCTING A PUBLIC SERVANT IN DISCHARGE OF PUBLIC FUNCTIONS UNDER § 186 R.P.C

§ 186 of the R.P.C provides for voluntarily obstructing a public servant in discharge of his public duties. To hold a person liable under this section two conditions are to be met with. Firstly, that there was a voluntary obstruction by the accused and secondly that it was caused against a public servant who was discharging his public functions.

§ 39 of the R.P.C gives the definition of ‘voluntarily’ as *“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*

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cause it.” In the present case, both of the accused had voluntarily obstructed Inspector Chaudhary as both of them engaged in a quarrel with the inspector instead of willingly cooperating in the discharge of the his public function. Angad by virtue of holding the inspector back by jumping on him and not letting him get hold of Abhishek obstructed the inspector while Abhishek caused obstruction by launching an attack on the Inspector.

The word ‘obstruction’ connotes some overt act in the nature of violence or show of violence.²² 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.²³ In the present matter, the fact that there was a show of force which prevented Inspector Chaudhary from executing his act construes to the fact that there was obstruction. Therefore, it is well established that there was ‘voluntarily obstruction’ on the part of both the accused connotes to the fact that there was a fault on their part.

The next bone of contention is whether Inspector Chaudhary was discharging his public functions. § 22 of The Police Act, 1861 gives us that *every police-officer shall, for all purposes in this Act contained, be considered to be always on duty, and may at any time be employed as a police-officer in any part of the general police-district.*

On 7th April, 2016, Inspector Chaudhary upon arriving at the scene saw both Angad and Abhishek pelting stones at some bikers which had led to a huge uproar and people running helter-skelter in panic. Being as honourable as he is and as according to § 22 of the Police Act, 1861, Inspector Chaudhary discharged the function that he as a public servant should have. But, this was disrupted by both Abhishek and Angad who even killed him in that

²² *Phudki v. State*, AIR 1955 All 104

²³ *State v. Babulal*, (1956) 58 Bom LR 1021

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pursuit. In the present case both the conditions stand justified and § 186 R.P.C. is thus applicable.

A contention may be raised by the defence that the act was done in self-defence. But if the public servant is acting under good faith under the colour of his office there is no right to private defence against the act.²⁴ Also, under § 99 of the R.P.C there is no right to private defence even if the act may not be strictly justifiable by law if the act is done in good faith by a public servant under the colour of the office. Further, it is pertinent to note that explanation 1 of the section makes it crystal clear that a person is deprived of the right to private defence if he knows that the person discharging the duty is a public servant. In the instant matter, it can be said without an iota of doubt that Abhishek as well as Angad knew that Amit Chaudhary was an inspector because they had confronted him earlier also together with the fact that they had done some background check on him as is indicated by the internet records.

Therefore in the present case Abhishek and Angad are guilty for obstructing a public servant in discharge of public functions under § 186 R.P.C.

3. ABHISHEK, DUSHYANT AND ANGAD ARE LIABLE UNDER § 304 R/W § 34 OF R.P.C.

§ 34 gets attracted when in furtherance of the common intention, several persons must have done several acts which together constitute an offense. In such a situation § 34 provides for each to be liable for the entire act as a whole²⁵. The major elements that are required to be proved while proving an individual's liability under § 34 of the R.P.C include the commission of an illegal act by several persons (3.1) and that such an act was done in the furtherance of the common intention (3.2).

²⁴ *Queen-Empress v. Poomalai Udayan*, (1898) 21 Mad 296; *Queen-Empress v. Pukot Kotu*, (1896) 19 Mad 349

²⁵ *Dhansai v. State of Orissa*, AIR 1969 Ori 105

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3.1 THERE WAS THE COMMISSION OF A CRIMINAL ACT

It has been established beyond reasonable doubt that there was a commission of the offence of the act as well as voluntary obstruction of the discharge of duty by a public servant.

It is not necessary to prove an overt act by a particular person in order to convict the person. Criminal act done by all or one of them in furtherance of the common intention of all would suffice to convict all the people.²⁶ Lastly, culpability of a person under § 34 cannot be excluded merely because he was not present at the scene of the occurrence of the particular offense for which he has been charged.²⁷ Therefore, in the present matter, the absence of Dushyant does not in any manner reduce his culpability as he had actively intentionally aided to the commission of the crime.

3.2 THE CRIMINAL ACT WAS DONE IN FURTHERANCE OF THE COMMON INTENTION

Common intention comes into being prior to the commission of the act in point of time²⁸. Therefore, there need be a prior plan to commit a crime. This pre-arranged plan however need not be an elaborate one²⁹. In most circumstances, proof of common intention has to be inferred from the act or conduct or other relevant circumstances of the case at hand³⁰.

In the instant matter, there existed direct references and hints which indicate common intention to commit the particular crime of killing the inspector. This can be inferred from:

²⁶ *State of UP v. Iftikhar Khan*, 1973 Cr LJ 636 (SC); *Surjit Singh v. State of Punjab*, 1983 Cr LJ 1111 (SC); *State of Punjab v. Mann Singh*, 1983 Cr LJ 229 (SC)

²⁷ *Tukaram Ganpet Pandave v. State of Maharashtra*, AIR 1974 SC 514

²⁸ *Sharif Ahmad Alias Achhan v. The State* (1956) 2 All 188; *Ramashish Yadav v. State of Bihar* (1999) 8 SCC 555

²⁹ *Pandurang v. State of Hyderabad*, AIR 1955 SC 216; *Bhopal Singh v. State of Rajasthan*, AIR 1968 Raj 305

³⁰ *Maqsoodan v. State of UP*, 1983 Cr LJ 218 (SC)

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- The words of Dushyant where he informed Abhishek and Angad that they should kill the inspector by stating- *“Iski yeh himmat, salley ko mar dalo, kam se kam hamare neta toh khush honge.”*³¹ Acting upon this statement, they committed the crime. Also, the words he used for comforting them showed that he had common intention to kill the inspector and he intentionally aided to it by springing up ideas of private defence in the minds of the co accused. The encouraging words show the same – *“You are a hero yourself and you know what to do and how to defend yourself.”*³² This made them search for the provisions of self-defence on the internet and at the very next opportunity they got to kill the inspector, they cashed it and took the self-defence to shroud their culpability and thus acted in the manner which was dictated to them by Dushyant. This shows the common intention on part of Dushyant to kill the inspector.
- The act of Angad jumping on the inspector and distracting him while Abhishek taking advantage of the opportunity and striking a fatal blow with an iron rod shows the common intention on their part to kill the inspector.
- The words exchanged in the telephonic conversation right after the killing also points out to the guilt of the accused people. As given in the telephonic conversation, Abhishek while talking to Dushyant stated that – *“You only said that mar dala isko and said you will protect me at all costs.”*³³ This indicates that there was an intention to commit the particular crime and therefore all three accused should be held accountable for the crime.

³¹ Moot Proposition, Para 15

³² *Ibid*

³³ Moot Proposition, Conversation 2

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The essence of liability under this section is the existence of a common intention animating the offenders. The physical presence at the scene of the offence sought to be rendered liable under this section is not one of the conditions of its applicability in every case.³⁴

For applying § 34 it is not necessary to show some overt act on the part of the accused.³⁵ The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar.³⁶ The Supreme Court in *Rishideo Pande v. State of U.P.*³⁷ observed that the common intention while presupposing a prior concert and a pre-arranged plan may be inferred from the surrounding circumstances and the conduct of the parties.

Therefore, all the collaborative facts and circumstances show that the conduct of the parties was such so as to commit a crime with a common intention.

4. DUSHYANT AND ANGAD ARE LIABLE FOR ABETMENT UNDER § 107 OF THE R.P.C.

It is humbly submitted before the Hon'ble Court of Sessions, Mavada, that the second accused, i.e., Angad (hereafter Accused 2) and the third accused, i.e., Dushyant (hereafter Accused 3) are guilty for abetting the offence of culpable homicide not amounting to murder under § 107 of the R.P.C.

Where the offence is committed in consequence of the abetment but there is no provision for punishment of such abetment, the abettor is to be punished along with the offender for the original offence.³⁸ It is humbly contented that Accused 2 and 3 are guilty for abetment. In

³⁴ *Jai Krishnan Das Manoharhardas Desai v. The State of Bombay*, (1960) 2 SCR 319

³⁵ *State of Punjab v. Bakhshish Singh*, 2009 (1) A.C.R. 1124

³⁶ *Narkami Deva v. State of Chhattisgarh*, 2009 (78) A.I.C. 530 (Chhatt)

³⁷ *Rishideo Pande v. State of U.P.*, AIR 1955 SC 331

³⁸ *Kishori Lal v. State of M.P.*, AIR 2007 SC 2457

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order to bring a successful conviction under this charge, it is pertinent to refer § 107 R.P.C, which elucidates the essentials of abetment.

In order to constitute a charge for Abetment, it is necessary to prove that, Accused 2 aided, abetted, counselled or prosecuted the commission of the principal offense [4.1]; that the principal offence was in fact committed [4.2.]; and that the abettor had intention to encourage the commission [4.3].³⁹

4.1 ACCUSED AIDED, ABETTED, COUNSELLED OR PROSECUTED THE COMMISSION OF THE PRINCIPAL OFFENCE

A person is said to '*instigate*' another to an act, when he actively suggests or stimulates him to commit the act by means of language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement.⁴⁰ It is not necessary that express and direct words be indicated, as to what exactly should be done.⁴¹

If an accused is alleged to have been an accomplice to the principal offence, the charge may allege that he aided, abetted, counselled or procured it and he will be convicted if he is proved to have participated in one or more of these four ways.⁴²

4.2 THE PRINCIPAL OFFENCE WAS IN FACT COMMITTED

The contents of the 'principal offence being committed' are mentioned above in detail, under **Issue 3**, and the same are not being reproduced herein again for the sake of brevity.

4.3 ACCUSED HAD INTENTION TO ENCOURAGE THE COMMISSION

The offense is complete as soon as the abettor has incited another to commit a crime, the consent is immaterial, and rather it is the intention of the person who abets the commission of

³⁹ Ratanlal and Dhirajlal, *Indian Penal Code*, (31st Enlarged Ed, 2006 p. 518)

⁴⁰ *Emperor v. Amiruddin*, (1922) 24 Bom LR 534

⁴¹ *Baby John v. State*, 1955 Cr. LJ 1273

⁴² *Ferguson v. Weaving* (1951) 1KB 814

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the act.⁴³ In the instant matter both Accused 2 and 3 had intention to encourage the commission of the crime as it would have led to make the leader of the political party happy which would have given them a better standing in the party politics. This is indicated in the statements made by Accused 3 to both Accused 1 and 2.⁴⁴ The desire to rise in the eyes of the party leader, in the present case, establishes motive. When a person is charged with the abetment of an offence, it is linked with an offence which has been proved.⁴⁵

Accused 1 & 2 being involved in youth politics, wanted a career in politics. Therefore, it was essential for them to make a breakthrough into the arena such that they receive acceptance from their political party. The instigation by Accused 3 developed in their minds, a motive to kill Inspector Chaudhary which further led to the commission of the crime. Even for Accused 3, who was a local leader, the rise in the political ladder mattered and the best way of making this happen was to clear out the obstruction in the form of a public servant whose loyalty to the other party was evident. Therefore all of the accused had political motive to kill Inspector Chaudhary as it would have led them to establish a prominent position in the party.

Words used by Accused 3 instigated Accused 1 to murder the deceased

Where abetment is by instigation, actual words used for instigation need not be proved. A person is said to instigate another when he urges forwarded or provokes, incites urges or encourages such person to do an act prohibited by law.⁴⁶ After hearing Accused 2's words, Accused 1's immediate reaction was to kill the inspector. This was in addition to the instigation that Accused 3 had earlier provided to Accused 1 in which he had openly used the words – "*Mar dalo sale ko*" together with giving him assurance about self-defence. This fact

⁴³ *Ramabatar Agarwalla v. State*, 1983 CrLJ 122

⁴⁴ Moot Proposition, Para 15

⁴⁵ *Goura Venkata Reddy v. State of A.P* (2003) 12 SCC 469

⁴⁶ *Ramabatar Agarwalla v. State* (1983) CrLJ 122 (Ori)

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must be borne in mind as it is relevant u/s. 14 of the Rabat Evidence Act, 1872 since it shows the state of mind of the accused.

The Prosecution submits that the evidence on record is sufficient to prove that the accused have committed abetment. The circumstantial evidence which stands corroborated goes to show that there was a prior meeting of minds between Accused 1, 2 & 3 to kill the inspector.

Accused 2 intentionally aided to the commission of the crime

The presence of Accused 2 is notable from the very beginning as he aided and instigated Abhishek and facilitated the crime. He had instigated the other to commit the offence and has rendered intentional aid by engaging in illegal acts.⁴⁷ In the present case, the accused had entered into a scuffle with the inspector despite the fact that the public servant was trying to stop Abhishek and not him and afterwards he jumped on to the inspector and tried stopping him from discharging his duties and this gave ample time to Abhishek to hit the inspector with the iron rod. Therefore, for attracting the charges of § 107 of R.P.C. it is necessary to prove either instigation or intentionally aiding, whereof in the present case it is fully established against alleged accused considering the above placed submissions, this Hon'ble Court must find Accused 2 & 3 guilty for the offence of abetment under § 107 of R.P.C.

⁴⁷ *Amilal v. State Of Rajasthan* (1996) CrLJ 1585 (Raj)

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P R A Y E R

Wherefore, in light of the facts stated, issues raised, arguments advanced and authorities cited, may this Hon'ble Court be pleased to hold, adjudge and declare that:

1. The accused are guilty of culpable homicide not amounting to murder in furtherance of common intention under § 304 r/w § 34, R.P.C., 1860.
2. The Accused 1 & 2 are guilty of obstructing public servant in discharge of public functions under § 186, R.P.C., 1860.
3. Accused 2 & 3 are guilty of abetment under § 107, R.P.C., 1860.

AND

Pass any other order that the Hon'ble Court may deem fit, in the interest of Justice, Equity and Good Conscience.

All of which is most humbly and respectfully submitted.

Place: Mavada, Jagutar, Rabat

Sd/-

Date:

(Counsel for the Prosecution)