

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



---

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

---

**S.C. No. 101 of 2016**

---

**STATE OF JAGUTR**

**PROSECUTION**

**V.**

**ABHISHEK LEPAT  
ANGAD LEPAT  
DUSHYANT LIKO**

**DEFENCE**

---

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

---

**MEMORANDUM ON BEHALF OF THE DEFENCE**

**--ABHISHEK, ANGAD AND DUSHYANT—**

**~~COUNSEL FOR THE DEFENCE~~**

|                          |
|--------------------------|
| <b>TABLE OF CONTENTS</b> |
|--------------------------|

|   |           |
|---|-----------|
| <b>LIST OF ABBREVIATIONS.....</b>                           | <b>4</b>  |
| <b>INDEX OF AUTHORITIES.....</b>                            | <b>6</b>  |
| <b>TABLE OF CASES .....</b>                                 | <b>6</b>  |
| <b>BOOKS REFERRED.....</b>                                  | <b>8</b>  |
| <b>STATUTES REFERRED.....</b>                               | <b>8</b>  |
| <b>WEBSITES REFERRED.....</b>                               | <b>9</b>  |
| <b>STATEMENT OF JURISDICTION.....</b>                       | <b>10</b> |
| <b>STATEMENT OF FACTS.....</b>                              | <b>11</b> |
| <b>STATEMENT OF CHARGES.....</b>                            | <b>12</b> |
| <b>SUMMARY OF ARGUMENTS.....</b>                            | <b>14</b> |
| <b>ARGUMENTS ADVANCED.....</b>                              | <b>16</b> |
| <b>1. ABHISHEK, ANGAD AND DUSHYANT ARE NOT LIABLE FOR</b>   |           |
| <b>    MURDER.....</b>                                      | <b>16</b> |
| [1.1] SECTION 96 OF RPC.....                                | 16        |
| [1.2] GUIDELINES TO ASCERTAIN RIGHT OF PRIVATE DEFENCE..... | 17        |
| [1.3] REASONABLE APPREHENSION OF VOLUNTARY CAUSING          |           |
| DEATH OR HURT.....  | 18        |
| [1.4] BURDEN OF PROOF ON ACCUSED.....                       | 20        |
| [1.5] PUBLIC SERVANT U/S. 99 OF RPC.....                    | 21        |
| [1.6] MEDICAL EVIDENCE.....                                 | 22        |

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

|   |           |
|---|-----------|
| [1.6.A] TEST OF ABSORPTION OF ALCOHOL.....  | 23        |
| [1.6.B] EFFECT ON BRAIN DUE TO HIGH ALCOHOL.....  | 23        |
| <b>2. ABHISHEK, ANGAD AND DUSHYANT DIDN'T HAD COMMON INTENTION<br/>TO COMMIT THE OFFENCE.....</b> | <b>24</b> |
| [2.1] ABSENCE OF PRE- ARRANGED PLAN.....  | 24        |
| [2.2] THE ACT WAS NOT DONE IN PURSUANT OF PRE- ARRANGED<br>PLAN.....                              | 25        |
| [2.3] ABSENCE OF MALA FIDE INTENTION.....   | 26        |
| [2.4] RULE OF CONSTRUCTIVE LIABILITY HAS NO EFFECT IN CASE OF<br>SUDDEN QUARREL.....              | 26        |
| [2.5] MERE PRESENCE ON THE SPOT DOESN'T CONSTITUTE<br>COMMON INTENTION.....                       | 27        |
| <b>3. ANGAD AND DUSHYANT DIDN'T ABETTED ABHISHEK TO<br/>COMMIT THE OFFENCE.....</b>               | <b>28</b> |
| [3.1] ABSENCE OF MENS REA.....  | 29        |
| [3.2] MERE ADVICE DOESN'T AMOUNT TO INSTIGATION.....  | 30        |
| [3.3] MERE PRESENCE AT THE SCENE DOESN'T AMOUNT TO<br>ABETMENT.....                               | 30        |
| <b>4. ABHISHEK AND ANGAD ARE NOT LIABLE U/S. 186 OF RPC.....</b>                                  | <b>31</b> |
| [4.1] POLICE OFFICER.....   | 32        |
| <b>PRAYER.....</b>  | <b>33</b> |

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

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

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

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

|                             |
|-----------------------------|
| <b>INDEX OF AUTHORITIES</b> |
|-----------------------------|

**TABLE OF CASES:****Cases decided from 1970- Till date (Supreme Court)**

| <b>Serial No.</b> | <b>Name of Case</b>                            | <b>Citation</b>                 | <b>Page Number</b> |
|-------------------|--|---------------------------------|--------------------|
| 1.                | Mohd. Ramzani v. State (Delhi Administration), | <i>AIR 1980 SC 1341</i>         | 17                 |
| 2.                | Dharam And Ors. vs. State of Haryana           | <i>(2007) 15 SCC 241</i>        | 19                 |
| 3.                | Bhuna Singh v. State of Bihar                  | <i>1980 BLJR 83</i>             | 20                 |
| 4.                | State of Gujarat v. Bai Fatima                 | <i>((1975) 2 SCC 7)</i>         | 20                 |
| 5.                | Salim Zia v. State of U.P.                     | <i>.(1979) 2 SCC 648)</i>       | 20                 |
| 6.                | Raj Singh v State of Haryana                   | <i>AIR 1999 SC 353</i>          | 21                 |
| 7.                | Rajput Anil Ram Sinh & Anr.v. State of Gujarat | <i>(1992) 2 GLR 1146</i>        | 25                 |
| 8.                | Tehal Singh v. State of Punjab                 | <i>AIR 1979 SC 1347</i>         | 25                 |
| 9.                | Harjinder Singh v. Karnail Singh               | <i>1998 Cr LJ 2556</i>          | 25                 |
| 10.               | Bududin v. State (Delhi Administration)        | <i>1978 Cr LJ NOC 155</i>       | 26                 |
| 11.               | Rama Meru v. State of Gujarat                  | <i>AIR 1992 SC 969</i>          | 26                 |
| 12.               | Hindu v. State of M.P.                         | <i>1992 Cr LJ 1630 (MP).</i>    | 26                 |
| 13.               | Ashok Kananjiya v. State of U.P.               | <i>1989 Cr LJ NOC 79 (All).</i> | 27                 |
| 14.               | Rewaram v. State of Maharashtra                | <i>1983 Cr LJ 1845</i>          | 28                 |
| 15.               | Gurucharan Singh v. State                      | <i>1985 Cr LJ NOC 56 (Del).</i> | 28                 |

## SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016

|     |                                |                        |    |
|-----|--------------------------------|------------------------|----|
| 16. | S.L. Goswami v. State of M.P., | <i>(1972) 3 SCC 22</i> | 29 |
| 17. | Shri Ram v. State of U.P.      | <i>AIR 1975 SC 175</i> | 30 |

**Cases decided from 1947- 1969 (Supreme Court)-**

| Serial No. | Name of Case                                      | Citation                            | Page Number |
|------------|---|-------------------------------------|-------------|
| 1.         | Munshi Ram v. Delhi Admn                          | <i>AIR 1968 SC 702</i>              | 20          |
| 2.         | Deoman Shamji                                     | <i>(1958) 61 Bom LR 30</i>          | 22          |
| 3.         | Krishna Govind v. State of Maharashtra            | <i>AIR 1968 SC 1413</i>             | 24          |
| 4.         | San Karan Nair Chellappen Nair v. State of Kerala | <i>AIR 1965 Ker. 248</i>            | 25          |
| 5.         | Fakirchand  | <i>AIR 1950 Madh B 76 (80)</i>      | 25          |
| 6.         | Pandurang v. State of Hyderabad                   | <i>AIR 1955 SC 216</i>              | 25          |
| 7.         | State of Bihar v. Lala Mahto                      | <i>A.I.R 1955 pat. 161 at p.169</i> | 25, 27      |

**Cases decided before 1947 (Privy Council)**

| Serial No. | Name of Case              | Citation                         | Page Number |
|------------|---------------------------|----------------------------------|-------------|
| 1.         | Emperor v. Abdul Hamim    | <i>AIR 1942 All 74</i>           | 21          |
| 2.         | Ram Parves                | <i>(1944) 23 Pat 328</i>         | 22          |
| 3.         | Abdul Hadi v. Emperor     | <i>AIR 1934 All 1934 All 829</i> | 22          |
| 4.         | Lal Chand v. Emperor      | <i>AIR 1931 Lah 523</i>          | 27          |
| 5.         | Asmat Sheikh v. Emperor   | <i>AIR 1940 Cal 147</i>          | 27          |
| 6.         | Raghunath Dass v. Emperor | <i>1920 Pat HC</i>               | 30          |
| 7.         | Chatru Gope v. Emperor    | <i>1917 Pat HC</i>               | 30          |

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

|    |                                   |                          |    |
|----|-----------------------------------|--------------------------|----|
| 8. | Lilla Singh                       | <i>(1894) 22 Cal 286</i> | 31 |
| 9. | Abdul Kabir Sidik Ujan v. Emperor | <i>AIR 1939 Sind 333</i> | 31 |

**BOOKS REFERRED -**

1. Gaur, KD, *Criminal Law: Cases and Materials*, (6th Ed. 2009)
2. Gupte and Dighe, *Criminal Manual*, (7th Ed. 2007)
3. Harris, *Criminal Law*, (22nd Ed. 2000)
4. I, III, IV Nelson R. A. *Indian Penal Code*, 10th Ed. (2008)
5. II, Mitra, B.B., *Code of Criminal Procedure, 1973* (20th ed. 2006)
6. Lal, Batuk, *The Law of Evidence*, (18th Ed. 2010)
7. Ratanlal and Dhirajlal, *The Indian Penal Code*, 34th Ed. (2013)
8. Ratanlal and Dhirajlal, *The Law of Evidence*, 34th Ed. (2013)
9. Dr. H.S.Gour, *Penal Law Of India, 11th Ed. Reprint(2004)*, Secs. 1 to 120.
10. Dr. H.S.Gour, *Penal Law Of India, 11th Ed. Reprint(2004)*, Secs. 363 to End
11. K. I. Vibhute, P.S.A. Pillai's *Criminal Law*, 12th Ed.
12. Prof. S.N. Mishra, *Indian Penal Code, 13th Ed.*

**STATUTES REFERRED –**

1. INDIAN PENAL CODE, 1860
2. INDIAN EVIDENCE ACT, 1872
3. CODE OF CRIMINAL PROCEDURE, 1973



**WEBSITES REFERRED –**

1. <http://www.findlaw.com>
2. <http://www.judis.nic.in>
3. <http://www.manupatra.co.in/AdvancedLegalSearch.aspx>
4. [www.scconline.in](http://www.scconline.in)
5. [www.manupatra.com](http://www.manupatra.com)
6. [www.cdjlwjournal.com](http://www.cdjlwjournal.com)
7. [www.westlawindia.com](http://www.westlawindia.com)

**STATEMENT OF JURISDICTION**

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

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

Read with

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

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

*All of which is respectfully submitted*

**STATEMENT OF FACTS**

1. Abhishek, Angad, Tanya and Natasha studies in Presidency College in Mavada and belongs to Lapat Community. Abhishek was elected as President of College Union in 2015 and was actively involved in its functioning.
2. After the protests, two boys, Dinesh and Peter started teasing Tanya and Natasha. On March 30, 2016, Abhishek and Angad pelted stones at them when they were teasing to which they threaten hem showing hands like gun.
3. After this incident, Inspector Amit Choudhary came and threatend them of dire consequences. They discussed it with their friend Dushyant who comforted them.
4. Later, Abhishek and Angad researched details on various police action during riots as well as details on legal protection under self defence.
5. On April 7, 2016, again Dinesh and Peter came to tease the girls to which Abhishek and Angad pelted stone on them and they ran away. Suddenly, Amit Choudhary came and slapped Abhishek and threatened him and put his hands on gun holster. Angad asked Abhishek to run away as inspector is going to shoot him. Abhishek to save himself takes a rod lying in auto garage and throws it at inspector, who got hit in head and fell on the pavement and again got hit on head by the stump of tree and later died on the way to the hospital.

**STATEMENT OF CHARGES****BEFORE THE HON'BLE COURT OF SESSIONS, MAVADA****State of Jagutar****v.****Mr. Abhishek Lepat and Anothers**

S.C. No. 101 of 2016

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

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

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

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

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

It is humbly submitted before this Hon'ble court that Abhishek, Angad and Dushyant are not liable for murder as they had exercised the right of Private Defence during the incident. Inspector Amit Chaudhary by starting the fight and later by showing the Gun Holster to the accused, had raised a reasonable apprehension of death or causing bodily injury in the mind of Abhishek and Angad. And therefore, they took recourse to save their life by counter-acting the Inspector by iron rod, a weapon which was laid down near by them. So, the defence humbly pleads before this Hon'ble court that the act committed was in self- defence and there was no intention of killing the Inspector.

**2. WHETHER THERE WAS COMMON INTENTION BETWEEN THE ACCUSED?**

It is humbly submitted before this Hon'ble Court that there was no common intention existing at the time of the occurrence of the act. The act as earlier pleaded was at the spot and in the spur of the moment. As part of the most important ingredient of common intention there was no preconcerted plan, or the act which was committed was not in pursuance of a pre decided plan. No evidences on record are being filed by the prosecution in regard to this issue and hence it can be proved that there was lack of common intention in the mind of accused.

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

It is humbly submitted before this Hon'ble court that Dusyant and Angad are not liable for instigating Abhishek as firstly, there was no mens rea on the part of Angad and Dushyant. Secondly, Dushyant merely discussed his views with them, without any malafide intention to instigate Abhishek to commit the act. Thirdly, Angad only intended to warn his friend to run away as there was reasonable apprehension of death created by the inspector. So, the ingredients of instigation is not proved by the prosecution beyond reasonable doubt with any evidences on record.

**4. WHETHER ABHISHEK AND ANGAD ARE LIABLE UNDER SEC.186 OF RPC?**

It is humbly submitted before this Hon'ble court that Abhishek and Angad are not liable for obstructing the deceased. Firstly, it was the Inspector who had started the scuffle in the first place and Secondly, he was also without authority as he did not have any warrant and also was not in his uniform. This can be inferred from the medical evidences .i.e the Post Mortem report. Thirdly, according to the Forensic report it is revealed that the inspector was highly drunk at the time of the incident, so by this we can infer that he was not executing his public function which is one of the essential ingredient of Sec.186 RPC.

**ARGUMENTS ADVANCED****1. ABHISHEK, ANGAD AND DUSHYANT ARE NOT LIABLE FOR MURDER**

It is humbly contended before this Hon'ble Sessions Court of Mavada, Jagutar that Abhishek (*hereinafter referred as DW 1*), Angad (*hereinafter referred as DW 2*) and Dushyant (*hereafter referred as DW 3*) are not guilty of culpable homicide not amounting to murder u/s. 302 of Rabat Penal Code, 1860. In the present case, the Hon'ble Court of Sessions has framed charges based on the Report<sup>1</sup> submitted by SI Hardik Bhatia (*hereinafter referred as PW- 3*<sup>2</sup>) u/s. 173<sup>3</sup> of Code of Criminal Procedure.

Furthermore, the accused humbly pleads and has taken the defence falling under the Chapter of General Exceptions i.e. *Right of Private Defence*, before this Hon'ble court.

**[1.1] SECTION 96 OF RPC -**

The right of private defence is codified in Sections 96 to 106 IPC. Section 96 declares that "*nothing is an offence which is done in exercise of the right of the private defence*".

This Section upholds that, if the danger to the body or property is there to a citizen, he need not flee away. He is entitled to hold his ground and strike back in gist of the sections of right of private defence.

---

<sup>1</sup> Moot proposition, Annexure- 6, Report of PW- 3, p. 19

<sup>2</sup> Moot proposition, List of Witnesses, p. 4

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



**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

The need of self preservation is rooted in the doctrine of necessity and it is the law of necessity to which a party may have recourse under certain situations to prevent greater personal injury which he may apprehend. Instantaneous defensive action means a degree of necessity. In other words self defence is entirely a rule of necessity. As with self-defence and prevention of crime we are concerned here with situations in which the accused is faced with a choice between two courses, either to allow some harm to occur to him, to another or to property, or to prevent that harm by committing that would otherwise be an offence, and he chooses the second course thereby averting a greater evil.

**SECTION 97** - states that *every person has right of defence of person as well as of property.*

**SECTION 100** - describes the situations in which the right of private defence of body extends to the extent of voluntarily causing of death.

**[1.2] GUIDELINES TO ASCERTAIN RIGHT OF PRIVATE DEFENCE-**

In *Darshan Singh v. State of Punjab*<sup>4</sup>, the Supreme Court laid down Guidelines for Right of Private Defence for Citizens. The apex court concluded by saying that a person who is under imminent threat is not expected to use force exactly required to repel the attack and his behavior cannot be weighed on “*golden scales.*” Even if at the heat of moment carries his defence a little further than that would be necessary when calculated with precision and exactitude by a calm and unruffled mind, the law makes due allowance for it.<sup>5</sup>

The Court declared their legal position under the following 10 guidelines:-

---

<sup>4</sup> AIR 2010 SC 1212

<sup>5</sup> Mohd. Ramzani v. State (Delhi Administration), AIR 1980 SC 1341.

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

1. The right of private defense is available only to one who is suddenly confronted with the necessity of averting an impending danger and not of self-creation.
2. A mere reasonable apprehension is enough to put the right of self-defense into operation. In other words, it is not necessary that there should be an actual commission of the offence in order to give rise to the right of private defense. It is enough if the accused apprehended that such an offence is contemplated and it is likely to be committed if the right of private defense is not exercised.
3. The right of private defense commences as soon as a reasonable apprehension arises and it is co-terminus with the duration of such apprehension.
4. It is unrealistic to expect a person under assault to modulate his defense step by step with any arithmetical exactitude.
5. In private defense the force used by the accused ought not to be wholly disproportionate or much greater than necessary for protection of the person or property.
6. The accused need not prove the existence of the right of private defense beyond reasonable doubt.
7. A person who is in imminent and reasonable danger of losing his life or limb may, in exercise of self defense, inflict any harm (even extending to death) on his assailant either when the assault is attempted or directly threatened.

**[1.3] REASONABLE APPREHENSION OF VOLUNTARY CAUSING DEATH OR HURT –**

To claim right of private defence extending to voluntary causing of death, the accused must show that there were circumstances giving rise to reasonable grounds for apprehending that

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

either death or grievous hurt would be caused to him. The law of private defence does not require that the person assaulted or facing apprehension of an assault must run away for safety. It entitles him to defend himself and law gives him right of private defence. There is no right of private defence where there is no apprehension of danger. Necessity of averting and impending danger must be present, real or apparent. The words “an act which does not reasonably cause the apprehension of death or grievous hurt” show even if the public officer acts under colour of his office and the act is justifiable or not, the immunity of public officer does not extend when there is reasonable apprehension of death or of grievous hurt.

Elaborating the scope of right of private defence, in *Dharam And Ors. vs. State of Haryana*,<sup>6</sup> it was held as under:- “ Thus, the basic principle underlying the doctrine of the right of private defence is that when an individual or his property is faced with a danger and immediate aid from the State machinery is not readily available, that individual is entitled to protect himself and his property. We may, however, hasten to add that the means and the force a threatened person adopts at the spur of the moment to ward off the danger and to save himself or his property cannot be weighed in golden scales. It is neither possible nor prudent to lay down abstract parameters which can be applied to determine as to whether the means and force adopted by the threatened person was proper or not. Answer to such a question depends upon a host of factors like the prevailing circumstances at the spot, his feelings at the relevant time, the confusion and the excitement depending on the nature of assault on him, etc.

---

<sup>6</sup> (2007) 15 SCC 241 in paragraphs (18) and (19)

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

There is no restriction as to weapon or mode of using it, when exercising right of private defence, provided circumstances of case are considered apt for exercise of the right.<sup>7</sup> Private defence is a right which in fact is meant to ward off the danger of being attacked but the danger must be is imminent, patent and real that it cannot be averted otherwise than by a counter-attack.

Armed prosecution body when has inflicted serious injuries on accused party and accused in return inflicted solitary blow to deceased, it is held that the right of private defence has not been exceeded.<sup>8</sup>

**[1.4] BURDEN OF PROOF ON ACCUSED -**

It is trite that the burden of establishing the plea of self-defence is on the accused but it is not as onerous as the one that lies on the prosecution. While the prosecution is required to prove its case beyond reasonable doubt, the accused need not establish the plea of self-defence to the hilt and may discharge the onus by showing preponderance of probabilities in favour of that plea on the basis of the material on record.<sup>9</sup>

The test to be applied in order to determine whether homicide which would otherwise be murder is manslaughter by reason of provocation is whether the provocation was sufficient to

---

<sup>7</sup> (1964) All WR (HC) 385 : 1964 All Cr R 263.

<sup>8</sup> Bhuna Singh v. State of Bihar, 1980 BLJR 83.

<sup>9</sup> Munshi Ram v. Delhi Admn.(AIR 1968 SC 702), State of Gujarat v. Bai Fatima((1975) 2 SCC 7) and Salim Zia v. State of U.P.(1979) 2 SCC 648)

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

deprive a reasonable man of his self- control, not whether it was sufficient to deprive the particular person charged of his self- control.<sup>10</sup>

In *Raj Singh v state of Haryana*,<sup>11</sup> The contention of the appellant is that he is not an aggressor and since the complainant party was in possession of lethal weapons which caused reasonable apprehension in the mind of the appellant as to the threat to his life and his two brothers and therefore the appellant had no option but to fire from his gun and the alleged act of the appellant cannot, in any manner, be said to be in excess of his right of private defence.

**[1.5] PUBLIC SERVANT U/S. 99 OF RPC-**

In this case the Allahabad High Court impressed that it is not only proper and advisable but really necessary that when police officer act in the discharge of their official duty, they should be clothed in their uniform so that the public should always know who they are. That rule undoubtedly applies to ordinary cases but even in the emergent cases in which the police officers might act without being clothed in their uniform, it is their duty to take some stepsto make it clear to the person whom they intend to arrest that the are officers of law. If they fail to do so, they cannot validly seek the protection of the Court. Consequently where a Police Officer having no right or authority to arrest a person seeks to arrest him without being in uniform and without declaring to such person that he is a police officer, such person is entitled to a right of private defence and his right is not taken away by section 99, I.P.C.<sup>12</sup>

---

<sup>10</sup> Halsbury's Laws of England Second Edition Volume 9, p. 434 & 435

<sup>11</sup> AIR 1999 SC 324

<sup>12</sup> Emperor v. Abdul Hamim, AIR 1942 All 74.

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

“Act not strictly justifiable by law” does not cover an act which is wholly illegal and totally without jurisdiction. The clause applies where a public servant acts irregularly in the exercise of his powers, and not where he acts outside the scope of his powers.<sup>13</sup> A police-officer holding a search warrant, without a written authority, cannot be said to be acting under colour of his office.<sup>14</sup>

In the leading Supreme Court<sup>15</sup> case it was laid down that: In a well ordered civilised society it is generally assumed that the State would take care of the persons and properties of individual citizens and that normally it is the function of the State to afford protection to such persons and their properties. This however, does not mean that a person suddenly called upon the face an assault must run away and thus protect himself. He is entitled to resist the attack and defend himself.

**[1.6] MEDICAL EVIDENCE –**

The Post Mortem Report<sup>16</sup> is inconsistent as after the requisition of the body on about 6 hours after death, the report says that there was Full rigour mortis which is highly impossible, as rigour mortis starts about 5-6 hours after death and finishes about i.e. Full rigour mortis occurs about 20-24 hours after death. Also, the forensic report<sup>17</sup> clearly reveals that there was high level

---

<sup>13</sup> Deoman Shamji, (1958) 61 Bom LR 30.

<sup>14</sup> Ram Parves, (1944) 23 Pat 328.

<sup>15</sup> Abdul Hadi v. Emperor, AIR 1934 All 1934 All 829.

<sup>16</sup> Moot Proposition , Annexure 3, pg 11

<sup>17</sup> Moot Proposition , Annexure 4, pg 13

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

of alcohol present in the stomach of the deceased alongwith fresh food contents which shows that he was highly drunk and was not in his senses.

**[1.6.A] TEST OF ABSORPTION OF ALCOHOL –**

Absorption of alcohol is affected by- The presence of food in stomach: food, especially fatty food delays emptying through the pylorus, which will in turn delay contact with the mucosa of the more rapidly absorbing duodenaljejunal segment of intestines. Fatty food also physically obstructs the contact of alcohol molecules with the gastric mucosa.<sup>18</sup>

**[1.6.B] EFFECT ON BRAIN DUE TO HIGH ALCOHOL -**

The effect on the brain, called drunkenness, is gradual in the order:

1. Frontal part of the brain is responsible for discrimination. It is this part which is affected first. It creates euphoria in the subject.
2. The brain part which controls the muscular coordination is the next to be affected. In the meanwhile the power of discrimination deteriorates further. The person loses control on contents of the speech.
3. Motor centres of the brain are the next to be affected.
4. Medulla, part of the brain responsible for respiration, heartbeat, is affected last. Coma and death may occur.<sup>19</sup>

---

<sup>18</sup> Dr. Gupta and Dr. Agrawal, Medical Jurisprudence and Toxicology (Practice and Procedure), 1<sup>st</sup> Edition, 2011  
p. 1615

<sup>19</sup> pg. 1616, *Ibid*

---

**2. ABHISHEK, ANGAD AND DUSHYANT DIDN'T HAD COMMON INTENTION TO COMMIT THE OFFENCE**

---

It is humbly submitted before this Hon'ble court that considering the elements of S. 34 of RPC, it is evident that the accused had not made any common plan to execute any offence. Further, the act done by DW-1 was in pursuance of private defence and was not previously arranged.

**[2.1] ABSENCE OF PRE- ARRANGED PLAN-**

The general principle is that common intention as defined in s. 34 implies a pre-arranged plan and to convict an Accused, it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan.<sup>20</sup>

In the case of *Krishna Govind v. State of Maharashtra*<sup>21</sup>, JJ. Subha Rao stated: "It is well settled that common intention within the meaning of the section implies a pre- arranged plan and the criminal act was done pursuant to the pre-arranged plan. The said plan may also develop on the spot during the course of the commission of the offence; but the crucial circumstances are that the said plan must precede the act constituting the offence, if that be so, before a court can convict a person under Sec.302, read with Sec.34 of the Indian Penal Code, it should come to a

---

<sup>20</sup>P.S.A. Pillai: Criminal Law, K I Vibhute (12th Ed. 2014)

<sup>21</sup>Krishna Govind v. State of Maharashtra, AIR 1968 SC 1413



**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

definite conclusion that the said person had prior concert with one or more other persons, named or unnamed, for committing the said offence.<sup>22</sup>

It is evident from the facts that DW-1, DW-2 and DW-3 were merely the members of CPR and shared same views and ideologies. But, it cannot be assumed that the mere discussion means a pre-arranged plan.

**[2.2] THE ACT WAS NOT DONE IN PURSUANT OF PRE- ARRANGED PLAN-**

To convict the accused of an offence applying S. 34, it should be proved that the criminal act was done in concert, pursuant to the pre-arranged plan.<sup>23</sup> The act must have been done in furtherance of common intention of all. Accordingly, there must have been a prior meeting of minds.<sup>24</sup> The section operates only when it is found as a fact that the criminal act done by an individual is in furtherance of the common intention and not without it.<sup>25</sup>

The Supreme Court in the case of *Harjinder Singh v. Karnail Singh* held that accused had fired in their self-defence as no evidence could show that the shots fired by the accused were in furtherance of their common intention.<sup>26</sup>

Here, the act done by DW-1 was in furtherance of private defence to save his own body which happened so sudden and was not pre- planned.

---

<sup>22</sup>San Karan Nair Chellappen Nair v. State of Kerala, AIR 1965 Ker. 248; Rajput Anil Ram Sinh & Anr.v. State of Gujarat, (1992) 2 GLR 1146 at p.1171; Tehal Singh v. State of Punjab, AIR 1979 SC 1347

<sup>23</sup>Fakirchand AIR 1950 Madh B 76 (80) : (1950) 51 Cr LJ 1265 (FB).

<sup>24</sup> *Pandurang v. State of Hyderabad*, AIR 1955 SC 216

<sup>25</sup> *State of Bihar v. Lala Mahto* A.I.R 1955 pat. 161 at p.169

<sup>26</sup>*Harjinder Singh v. Karnail Singh & Others* 1998 Cr LJ 2556.

**[2.3] ABSENCE OF MALA FIDE INTENTION-**

Intention must be known to others and must be shared by them. Sudden action culminating in a criminal act beyond the contemplation of others does not answer Section 34, R.P.C.<sup>27</sup>

Where, according to medical evidence, though the injuries were collectively sufficient to cause death, it cannot definitely be held that the accused had a common intention to murder the deceased when the common intention to murder the accused is not established beyond all reasonable doubt, simply on account of death as a result of cumulative effect of multiple injuries caused by sticks, stones and gun-shots, conviction under Section 302 read with Section 34 I.P.C. cannot be sustained.<sup>28</sup>

In the case of *Hindu v. State of M.P.*, it was held that when there was no pre-concert nor there is any pre-arranged plan and injuries caused by the accused are not individually sufficient in the ordinary course of nature to cause death, but collectively they resulted in death of the victim, the offence doesn't answer S. 34 RPC.<sup>29</sup>

**[2.4] RULE OF CONSTRUCTIVE LIABILITY HAS NO EFFECT IN CASE OF SUDDEN QUARREL-**

---

<sup>27</sup>Bududin v. State (Delhi Administration) 1978 Cr LJ NOC 155.

<sup>28</sup>Rama Meru v. State of Gujarat, AIR 1992 SC 969: 1993 SCC (Cri) 106 : 1993 Supp1(1) SCC 315.

<sup>29</sup>Hindu v. State of M.P., 1992 Cr LJ 1630 (MP).

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

Section 34 laying down the constructive and joint liability for acts done in furtherance of common intention as no application to acts committed in the course of sudden quarrel without any common intention amongst the accused.<sup>30</sup>

Exception 4<sup>th</sup> to Section 300, I.P.C. contemplates a culpable homicide in sudden quarrel, etc. if the Court is satisfied that any of the accused has brought himself within the exception 4 to Section 300, there is no room for the application of Section 34 against the other accused.<sup>31</sup>

The crucial test as to the applicability of constructive liability under Section 34 is to be found in the phrase “in furtherance of the common intention of all”. When the criminal acts becomes independent of the common intention though done in pursuance to an intention same or similar to that common intention of giving rise to consequence same or similar in nature as contemplated by the common intention, the rule of constructive liability as laid down under Section 34 ceases to operate and others, who are a party to the original common intention will not be held liable constructively for that criminal act.<sup>32</sup>

**[2.5] MERE PRESENCE ON THE SPOT DOESN'T CONSTITUTE COMMON INTENTION-**

Merely because a person entered with accused at the place of occurrence, it cannot be said that he shared the common intention of murder with the accused.<sup>33</sup>

---

<sup>30</sup>Lal Chand v. Emperor AIR 1931 Lah 523.

<sup>31</sup>Asmat Sheikh v. Emperor AIR 1940 Cal 147.

<sup>32</sup>State of Bihar v. LalaMahto AIR 1955 Pat 161 (169, 170).

<sup>33</sup>Ashok Kananjiya v. State of U.P. 1989 Cr LJ NOC 79 (All).

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

When there was no allegation that merely standing a person incited the other accused to commence any act or to continue it, from which any inference of any meeting of the minds could be deduced, S. 34 doesn't operate here.<sup>34</sup>

In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.<sup>35</sup>

In the present case, the ingredients of common intention are not fulfilled as there was no pre-arranged plan and the act committed was not in furtherance of the common plan.

---

**3. ANGAD AND DUSHYANT DIDN'T ABETTED ABHISHEK TO COMMIT THE OFFENCE**

---

Considering the elements of Section 107, it is evident that the following will not form the basis to hold DW-2 and DW-3 guilty of abetting DW-1. The ingredients of Section 107 are:

- a) That the accused aided, abetted, counselled or procured the commission of the principal offence;
- b) That the principal offence was in fact committed; and
- c) That he had the intent to aid or encourage its commission<sup>36</sup>

---

<sup>34</sup>Rewaram v. State of Maharashtra 1983 Cr LJ 1845.

<sup>35</sup>Gurucharan Singh v. State 1985 Cr LJ NOC 56 (Del).

<sup>36</sup>CROSS AND JONES on Introduction to Criminal Law, 9<sup>th</sup> ed., para 19.4, p. 387.

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

The onus of proving all the ingredients of an offence is always upon the Prosecution and at no stage does it shift to the Accused. Even in cases where the defence of the Accused does not appear to be credible or is palpably false that burden does not become any less.<sup>37</sup>

**[3.1] ABSENCE OF MENS REA:**

Describing the need of mental, element which must exist to an abettor to render him punishable. *HALSBURY* laid down : A person cannot be convicted as a secondary party unless he was aware of all the essential matters which make the act done a crime; but he need not have known that the act amounted in law to a crime. Criminal liability as a secondary party arises by virtue of the common law; hence men rea is required of that party, even though the offence is one of strict liability as regards the principal. It is not enough that the secondary party does acts which in fact aid or encourage the commission of the crime; it must be proved that he intended that the crime should be committed or not. But it was not necessary to prove that there was shared intention between the secondary party and the principal. A person does not become a secondary party to a particular crime by rendering assistance to others knowing merely that the others have criminal objective in view; it must be shown that the crime contemplated was of the same kind as that in fact committed.<sup>38</sup>

---

<sup>37</sup> *S.L. Goswami v. State of M.P.*, (1972) 3 SCC 22

<sup>38</sup> *HALSBURY'S Laws of England*, 4<sup>th</sup> ed., Vol. 11, para 45, p. 36.

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

In order to constitute abetment, the abettor must be shown to have intentionally aided to commission of crime. Mere proof that the crime charged could not have been committed without involvement of alleged abettor is not enough to be liable u/s. 107.<sup>39</sup>

**[3.2] MERE ADVICE DOESN'T AMOUNT TO INSTIGATION-**

Instigation necessarily indicates some active suggestion, or support or stimulation to the commission of the act itself, and advice can become an instigation only if it is found that it was an advice which was meant actively to suggest or stimulate the commission of an offence. The fact that a person advises another to do a thing, does not necessarily mean that he "instigates" that other to do that thing within the meaning of section 107(1) of the Penal Code.<sup>40</sup>

The fact that Abhishek discussed with Dushyant the threat of Amit Choudhary and he advised him to take necessary actions against such threats without an intention to instigate Abhishek to commit murder of deceased doesn't amount to abetment u/s. 107 of RPC.

**[3.3] MERE PRESENCE AT THE SCENE DOESN'T AMOUNT TO ABETMENT-**

Mere presence on the occasion of the commission of an offence does not amount to abetment within the meaning of section 107 of the Penal Code.<sup>41</sup>

Therefore, the fact that Angad was present at the scene with Abhishek doesn't make him liable for offence of abetment. Everything happened so sudden that it was not possible for him to

---

<sup>39</sup> Shri Ram v. State of U.P., AIR 1975 SC 175

<sup>40</sup> Raghunath Dass v. Emperor, 1920 Pat HC

<sup>41</sup> Chatru Gope v. Emperor, 1917 Pat HC

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

instigate Abhishek to commit murder. He only said Abhishek to run as Inspector is going to kill him and didn't urge, provoke or instigate him to commit murder of the deceased.

---

**4. ABHISHEK AND ANGAD ARE NOT LIABLE U/S. 186 OF RPC –**

---

**Section 186 -**

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

This section provides for voluntary obstructing a public servant in the discharge of his duties. It must be shown that the obstruction or the resistance was offered to a public servant in the discharge of his duties or public functions as authorized by law. The mere fact of a public servant believing that he was acting in the course of his discharge of his duties will not be sufficient to make resistance or obstruction to him amount to an offence.<sup>42</sup>

Section 186 contemplates that the public servant obstructed should be discharging his public functions lawfully, but when there was no legal basis for his acts, the section does not apply.<sup>43</sup>

But in subsequent cases it has held that even though a public servant in acting in good faith, if the order under which he acts is illegal or ultra vires, any obstruction caused to him would not

---

<sup>42</sup> Lilla Singh, (1894) 22 Cal 286.

<sup>43</sup> Abdul Kabir Sidik Ujan v. Emperor, AIR 1939 Sind 333.

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT- 2016**

be punishable under this section. No cognizance of offence shall be taken where records did not show that petitioner employee was performing public duty at the time of assault.<sup>44</sup>

**[4.1] POLICE OFFICER-**

The officer or other person killed must have been acting at the time under a lawful authority. If he was at the time acting under a writ or warrant which is invalid prima facie, or if the deceased officer was arresting or attempting to arrest the accused without a warrant for a cause for which he was not entitled so to arrest him, the killing is manslaughter<sup>45</sup> only, and not murder. The same principle applies where a constable or other person present is killed when lawfully interfering to prevent the commission of crime or a breach of peace. The officer must be at the time when he was killed having been acting within the limit of his local authority, or the offence will be manslaughter. The killing of an officer in execution of his duty is manslaughter only and not murder unless he is both lawfully authorised and exercising his duty in a legal manner.<sup>46</sup>

---

<sup>44</sup> Ramesh Kumar v. Smt. Sushila Srivastava, 1997 Cr LJ 282 (Raj).

<sup>45</sup> Manslaughter- Manslaughter is the unlawful killing of such a person without malice either expressed or implied, <sup>45</sup> Halsbury's Laws of England Second Edition Volume 9, p. 426

<sup>46</sup> Halsbury's Laws of England Second Edition Volume 9, p. 431



**PRAYER FOR RELIEF**

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

That it may be pleased to **Acquit (u/s 235 of the CrPC):**

1. Abhishek, Angad and Dushyant for the offences u/s. 304 r/w 34 of RPC.
2. Abhishek and Angad for the offences u/s. 186 of RPC.
3. Angad and Dushyant for the offences u/s. 107 r/w 34 of RPC.

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

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

Respectfully Submitted

Place: Mavada, Jagutar

Date: 24th September 2016

S/d \_\_\_\_\_

Counsel for Defence