TAW 2

SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION, 2016

BEFORE THE COURT OF SESSIONS

AT MAVADA, JAGUTAR

SC. NO. 101 OF 2016

STATE OF JAGUTAR

(PROSECUTION**)**

V.

ABHISHEK, ANGAD & DUSHYANT

(DEFENCE**)**

FOR OFFENCES CHARGED UNDER:

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

UPON SUBMISSION TO THE HON'BLE SESSIONS JUDGE

MEMORANDUM ON BEHALF OF THE DEFENCE

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LIST OF ABBREVIATIONS

AIR	All India Reporter
All	Allahabad High Court
Cal	Calcutta High Court
Cri LJ / Cr LJ	Criminal Law Journal
CrPC	Code of Criminal Procedure
Del	Delhi High Court
DW	Defence Witness
Ed.	Edition
Guj	Gujarat
HC	High Court
Hon'ble	Honorable
IPC	Indian Penal Code
IC	Indian Cases
i.e.	that is
Mad	Madras High Court
No.	Number
Ori	Orissa High Court
p.	Page Number
P&H	Punjab and Haryana High Court
Pat	Patna High Court

PW	Prosecution Witness
Raj	Rajasthan High Court
RPC	Rabat Penal Code
SC	Supreme Court
SCC	Supreme Court Cases
SCJ	Supreme Court Journal
SCR	Supreme Court Reporter
TN	Tamil Nadu High Court
u/s	under section
Uttarakhand	Utt
v.	Versus
§, S.	Section

STATEMENT OF JURISDICTION

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

Section 177:

'**177. Ordinary place of inquiry and trial-**

Every offence shall ordinarily be inquired into and tried by a Court within whose local jurisdiction it was committed.'

Read with Section 209:

'**209. Commitment of case to Court of Session when offence is triable exclusively by it-**

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall- (a) commit the case to the Court of Session; (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial; (c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence; (d) notify the Public Prosecutor of the commitment of the case to the Court of Session.'

STATEMENT OF FACTS

BACKGROUND

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

LEGAL MATTER

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

STATEMENT OF CHARGES

CHARGE I

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

CHARGE II

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

CHARGE III

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

SUMMARY OF ARGUMENTS

ISSUE 1

A1, A2 and A3 are not liable u/s 304

It is humbly submitted before the Hon'ble court that the accused are not liable under § 304 as they did not have any common intention to commit the offence, there was no meeting of minds and A1 did not act in furtherance of the same. Moreover, there was no abetment on the part of A2 and A3 as they had no intention to abet A1 to commit the offence under S. 304 and there was no nexus established between the instigation and act abetted. The act of A1 also did not qualify as culpable homicide under § 299 as there was no intention on his part and the blow on the deceased's head, which was due to A1, was not the reason for his death. In arguendo, A1 did not have any knowledge that he was likely to cause death through his act of self-defense. Accused are also not liable under § 186 as they did not cause any obstruction and the deceased as not performing his public duty.

ISSUE 2

A1 and A2 are not liable u/s 186

It is humbly submitted before the Hon'ble court that A1 and A2 are not liable under § 186 because they did not cause any voluntary obstruction on the part of the accused persons as it was done in the urge of self-defense. Moreover, the deceased was not acting in the capacity of a public servant as the deceased acted in furtherance of the grudge which he held against the accused and his act was not justifiable by law.

ARGUMENTS ADVANCED

1 THE ACCUSED ARE NOT LIABLE FOR CULPABLE HOMICIDE U/S 299 RPC

It is humbly submitted before this Hon'ble Court that the three accused are not liable for Culpable Homicide u/s 299 RPC.[1] The submissions have been put forth in four limbs: **[1.1]** The three accused did not share Common Intention[2] to commit the crime; **[1.2]** A2 and A3 are not liable for abetment u/s 107[3]; **[1.3]** The actions of the accused do not qualify as Culpable Homicide u/s 299 RPC; **[1.4]** A1 was acting under Self-defence.

1.1 THE THREE ACCUSED DID NOT SHARE COMMON INTENTION TO COMMIT THE CRIME

It is humbly contended that the three accused i.e. A1, A2, and A3 did not share Common Intention to commit the crime of Culpable Homicide punishable u/s 304[4] of RPC In the matter at hand, it has been wrongfully believed and alleged that any of the accused had individual or common intention to commit the crime. The submissions in this regard are made in two limbs: **[1.1.1]** There was a meeting of mind among the three accused; **[1.1.2]** he accused did not act in furtherance of that Common Intention.

1.1.1. There was no meeting of mind among the three accused

Common intention denotes action in concert and necessarily postulates the existence of a pre arranged plan and that must mean a prior meeting of minds.[5] There must be data from which it can be inferred and the inference of common intention "should never be reached

[1] § 299 of IPC (Act No. 45 of 1860).

[2] § 34 of IPC (Act No. 45 of 1860).

[3] § 107 of IPC (Act No. 45 of 1860).

[4] § 304 of IPC (Act No. 45 of 1860).

[5] RATANLAL & DHIRAJLAL, INDIAN PENAL CODE, (33rd Ed., 2011), p. 133.

unless it is a necessary inference deducible from the circumstances of the case."[6] Moreover, for an inference of Common Intention being drawn for the purposes of S. 34 RPC the evidence and circumstances of the case should establish, without any room of doubt, that a meeting of minds and a fusion of ideas had taken place amongst different accused and in prosecution of it the overt acts of the accused persons flowed out as if in obedience to the command of a single mind. In other words, the act or acts of one or more of the offenders should be attributable to a single and unified line of thought and not to parallel and allied lines of thought, said Allahabad HC.[7]

In the present case, it cannot be established that the accused had any plan to commit the aforementioned crime. There are no facts which can prove beyond reasonable doubt that there was a fusion of ideas among the three to commit the crime. A mere conversation among three persons is not enough to establish Common Intention, there has to be premeditation of minds which is lacking in the present case. Moreover, the conversation of A1 and A3 proves that there was no meeting of mind, when A3 clearly denies any sort of involvement in the crime.[8] Similarly, A3 and A1 never had any conversation or any meeting of minds through which one can establish that the two had **'Common Intention'** to commit the crime.

1.1.2. The accused did not act in furtherance of that common intention

Common Intention requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all.[9]S. 34 uses the words '*in furtherance of the common intention of all'*. "*It does not say 'the common intention of all' in the plural which might mean similar*

[6] Bashir v. State of UP, AIR 1953 All 668.

[7] Gangotri Singh v. State of UP, (198)1 CrLJ NOC 190 (All).

[8] Case data, Exhibit 5, p. 7.

[9] Pandurang v. State of Hyderabad, AIR 1955 SC 216.

intention.[10] *Nor does the section say 'an intention common to all' which might mean same intention.*[11] *Care must, therefore be taken*".[12] To constitute Common Intention it is necessary that the intention of each one of them be known to the rest of them and be shared by them.[13]

It can, from nowhere, be established that the act done by A1 was done in furtherance of a plan or intention shared by all three of them. The act of A1 was nothing but in self-defence and an act of self-defence can never be planned and thus the question of common intention shared by the accused does not even arise.

It is essential that the accused join in the actual doing of the act and not merely in planning its preparation. If the accused was not present at the crime scene, he cannot be convicted with the aid of S. 34.[14] In ***Ramaswami Ayangar's case***, SC ruled that in case of offence involving physical violence however, it is essential for the application of S. 34 that the person who instigates or aids the crime must be physically present.[15] Knowledge that an offence is likely to be committed is not what is contemplated in this section[16]. In the present case, it is clear from the facts that A3 was not present on the crime scene and hence he cannot be held liable with the aid of S. 34. Thus, in the light of above arguments it is submitted that, the three accused did not share Common Intention to commit the crime.

[10] Chen Siyuan, The Final Twist in Common Intention, Sing. J.L.S., (2011) 1-13; *see also* Nathaniel Yong-Ern Khng & Chen Siyuan, "Recent Developments in Common Intention", (2009) 21 Sing. Ac. L.J.; *see also* Michael Hor, "Common Intention and the Enterprise of Constructing Criminal Liability", (1999) Sing. J.L.S. 494.

[11] 1 AHMED EJAZ, LAW OF CRIMES.

[12] 4 HALSBURY, LAWS OF INDIA, (3rd Ed., 1955), p. 315.

[13] Tillu Ahir v. Rex, AIR 1949 All 89; *see also* Evidence Act (Act No.1 of 1972).

[14] Abdul Hassan v. State of Orissa, (1963) 2 CrLJ 229 (Ori).

[15] Ramaswami Ayangar v. State of Tamil Nadu, AIR 1976 SC 2027.

[16] Re Bassapa, AIR 1951 Kant 1.

1.2. A2 AND A3 ARE NOT LIABLE FOR ABETMENT U/S 107

It is humbly contented before this Hon'ble Court that A2 and A3 are not guilty of the offence u/s 107, of the RPC In the matter at hand, it has been wrongfully alleged that both the accused have committed the offence of abetment.

Abetment[17] is instigating a person to do a certain thing or engaging with one or more other person or persons in a conspiracy to do that thing and an act or illegal omission in pursuance to the conspiracy is committed or intentionally aiding a person by any act or illegal omission, to do that thing. The submissions have been made in two limbs: **[1.2.1]** A2 and A3 had no intention to abet A1; **[1.2.2]** There is no direct connection between the acts of A2 and A3, to that of A1.

1.2.1. A2 and A3 had no intention to abet A1.

Abetment involves the mental process of instigating a person. Instigation consists in actively suggesting and stimulating another to act.[18] To constitute '**instigation**', a person who instigates another has to provoke, incite, urge or encourage doing of an act by the other, by goading or urging forward.[19] To make a person liable u/s 107, i.e. abetment by instigation, it is important to prove that there was presence of '***mens rea***'[20] on the part of abettor and the act abetted should be committed in consequence of the abetment.[21]

It is a well established principal that, "*a mere word, without necessary intent to incite a person, uttered in a quarrel or in a spur of the moment or in anger does not constitute*

[17] *Supra* note 3.

[18] Re LakshminarayanaAiyar, AIR 1918 Mad 738.

[19] 1 SK SARVARIYA, RA NELSON' INDIAN PENAL CODE, (10th Ed., 2008), p. 862.

[20] Re Nennur Rami Reddi, AIR 1917 Mad 351.

[21] Ranganayaki v. State, 2004 12 SCC 521.

'instigation'".[22] In the facts it is clearly stated that the words spoken by A3 regarding the death of the deceased were said in a fit of rage. It is logical to say that the words uttered in a quarrel or in a spur of moment can't be taken to be uttered with *mens rea* required to constitute instigation as they are uttered in a fit of anger and emotional state. [23] Therefore, it is submitted that A3 can't be held liable u/s 107 as there was no presence of *mens rea*. Specific intent on part of either A2 or A3 can't be established to get cause the death of the deceased, by making A1 as an intermediary.

To constitute abetment, the abettor must be shown to have "**intentionally**" aided the 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 S. 107*".[24] The phone conversation[25] between A1 and A3 shows a clear absence of intention on the part of A3. Also, A2 did not in any manner intended to abet A1 but rather was making him aware of the danger from the deceased and hence, is not liable u/s 107.

1.2.2. There is no direct connection between the acts of A2 and A3 to that of A1

It has been held by the Court that there needs to be close causal connection between instigation and act committed.[26] The instigation must be with reference to the thing that was done and not to the thing that was likely to have been done by the person who is instigated. It is only if this condition is fulfilled that a person can be guilty of abetment by instigation.[27] If

[22] Ramesh Kumar v. State of Chattisgarh, (2001) 9 SCC 618.

[23] Hemchandra Shashittal v. State of Maharashtra, (2001) 4 SCC 525.

[24] Shri Ram v. The State of UP, AIR 1975 SC 175.

[25] Case Data, Exhibit 5, p. 7.

[26] State of Gujarat v. Pradyuman Raman Lal Mehta, (1999) CrLJ 736 (Guj).

[27] Arjun Singh v. State of HP, (Criminal Appeal No. 224 of 2009) (SC).

we refer to the facts, we can see that the words spoken by A2 cannot be related to the final act done by A1. The words were, "***he is going to shoot you, quickly escape***"[28], which clearly shows that A3 only asked A1 to escape from the scene. The action of A1 was not in reference to what A2 said but was rather an act of self-defense as will be proved further. Also, conversation of A1 and A3 happened a week ago and the words uttered by A3 were in rage. Therefore, there being no nexus between act of A1 with the acts of A2 and A3, they cannot be held liable u/s 107.

1.3. THE ACTIONS OF THE ACCUSED DO NOT QUALIFY AS CULPABLE HOMICIDE U/S 299 RPC

It is humbly submitted before this Hon'ble court that the actions of the accused do not qualify as Culpable Homicide u/s 299. The section has both the mental element and the conduct necessary in order to hold a person liable for the offence under it. Intent and knowledge in the ingredients of the section are the existence of a positive mental attitude and this mental condition is the special *mens rea* necessary for the offence under the section. Culpable Homicide consists of three elements: (a) death of a human being (b) which is caused by the physical conduct of the person & (c) the mental conduct of that person towards the consequences of such conduct. The submissions are made in four limbs: **[1.3.1]** The act of A1 resulted in the death of the deceased; **[1.3.2]** A1 did not act with the intention of causing death; **[1.3.3]** A1 did the act without the intention of causing such bodily injury as is likely to cause death; **[1.3.4]** A1 did the act without the knowledge that he is likely by such act to cause death.

[28] Case Data, ¶ 17.

1.3.1. The act of A1 resulted in the death of the deceased

An act is said to cause death when death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result.[29] The act should be of such a nature that it would put to peril someone's life or damage someone's life to such an extent that the person would die. In most cases the act would involve a high degree of violence against the person.[30] In the present case, none of the medical evidences have been able to establish that the death of accused occurred due to the blow on head of the accused. Hence, it is clear that death did not occur due to the actions of A1.

1.3.2. A1 did not act with the intention of causing death

Any voluntary act is given effect because of determination and will to cause that act.[31] This determination coupled with the knowledge of the consequence is the main ingredient of intention.[32]Under RPC, **no constructive, but actual intention is required**.[33]

In a case, "*the accused were two teenage boys who has pushed part of paving stone off a railway bridge and train passed at the same time due to which stones coming through the window of the cab killed the guard. The House Lords upholding the boys' conviction for manslaughter held that an accused is guilty of manslaughter if it was proved that he intentionally did an act which was unlawful and dangerous and that act inadvertently had caused the death."*[34]

[29] D. Yohannan v. State of Kerala, AIR 1958 Ker 207.

[30] 3 S.K. SARVARIA, RA NELSON'S INDIAN PENAL CODE, (10th Ed., 2008), p. 1268.

[31] *Id.*

[32] SHAMSUL HUDA, PRINCIPLES OF LAW OF CRIMES, (1st Ed., 1982), p. 170.

[33] Queen v. Gureeboola, [1978] 5 WR 42.

[34] D.P.P. v. Newbury, [1977] AC 50 HL.

In the present case, the accused acted in ***self-defense***, and this fact alone is enough to negate the presence of intention to cause the death of the deceased. A1 had no intention of causing death of deceased.

1.3.3. A1 did the act without the intention of causing such bodily injury as is likely to cause death

The accused had no intention to cause such bodily injury which would result in the death of the accused. The connection between the 'act' and the death caused must be direct and distinct; though not immediate it must not be too remote. If the nature of the connection between the act and the death is in itself obscure, or if it obscured by the action of concurrent causes, or if the connection is broken by the intervention of subsequent causes, or if the interval of time between the death and the act is too long, *then the above condition is not fulfilled*.[35] Words used in the section '***that bodily injury sufficient in the ordinary course of nature to cause death***' indicate that death is most probable result of the injury.[36]

The second clause of S. 299 requires an intention to cause such bodily injury as is likely to cause death. The question is that of fact and can be divided into two parts: *(a) was bodily injury intended? (b) was such bodily injury likely to cause death*? If both the answers are in affirmative, **then the offence is Culpable Homicide**.[37] However, when one asks whether a bodily injury is likely to cause death that means as a natural and probable consequence of the injury, and not as a special and abnormal consequence of some disability, on the part of the victim, which was unknown to the offender.[38] In the present case the answer to both the

[35] RATANLAL & DHIRAJLAL, LAW OF CRIMES, (33rd Ed., 2011), p. 1268.

[36] Daya Nand v. State of Harayana, AIR 2008 SC 1823.

[37] *Id*.

[38] KD GAUR, CRIMINAL LAW: CASES AND MATERIALS, (6th Ed., 2014), p.1248.

questions is in negative and hence this provision cannot be attracted to hold the accused liable.

Also, the accused as stated earlier and will be proved in detail further, acted in self defense. The act of the accused was proportionate to the threat caused to him by the deceased. Also, there is no connection between the act and the death caused, hence, it is clear that the intention to cause such bodily injury as is likely to cause death was absent on the part of the accused.

1.3.4. A1 did the act without the knowledge that he is likely by such act to cause death

'**Knowledge**' is a strong word *and imports a certainty and not mere probability*.[39] A guilty intention or knowledge is, thus, essential to this offence, and if it does not exist, the killing cannot amount to Culpable Homicide.[40] The presence of the same in the present case is absent and the accused. The accused in the present case had no knowledge that in the process of defending himself he will be causing death of the accused. In view of S. 299 IPC, the material relied upon by the prosecution for framing charge under Part II of S. 304, IPC, must indicate that the accused had done an act which had caused death with at least such a knowledge that he was by such act likely to cause death.[41] In ***Dharma Pal v. State Uttarakhand***[42], it was stated by Hon'ble SC that:

"Where the dispute arose between the accused persons on one side and the deceased on the other over partition of the house in which they were living, the evidence showing that the deceased was angry enough, armed with gundala and opened attack on two out of the three accused persons, there was every possibility for the accused to have apprehended sufficient

[39] RATANLAL AND DHIRAJLAL, INDIAN PENAL CODE, (33rd Ed., 2011), p.1270.

[40] Empress v. Fox, (1880) ILR 2 All 522.

[41] Keshub Mahindra v. State of M.P., (1996) 6 SCC 129.

[42] Dharam Pal v. State of Uttarakhand, (2007) CrLJ 383 (Utt).

danger to himself justifying his taking recourse to protecting himself, single blow inflicted in abdomen of the deceased by the accused snatching weapon from assailant was not excessive use of force in his right of self defence". So, the conviction u/s 304, Part I was set aside.[43] Similarly, in the present case the accused had no knowledge that his act in any manner would result in the death of the accused. He was merely acting in self-defense. Hence, in the light of the arguments stated above, it is most humbly submitted that the three accused are not liable for the crime of Culpable Homicide not amounting to murder u/s 299 and cannot be convicted u/s 304 RPC.

1.4. A1 WAS ACTING UNDER SELF-DEFENSE

It is humbly submitted before this Hon'ble Court that A1 acted in self-defense. The right of private defense is to serve a social purpose and as per the precedence of the Court, there is nothing more degrading than running away in a case of attack rather than responding to it urgently.[44] The submissions in this regard are made in three limbs; **[1.4.1]** A1 did not have sufficient time for the recourse to the public authorities[45]; **[1.4.2]** There was reasonable apprehension of death or grievous hurt[46]; **[1.4.3]** That only necessary harm was made.[47]

1.4.1. A1 did not have sufficient time for the recourse to the public authorities

Right of private defense is applicable if the accused has no sufficient time to recourse to public authorities.[48] Presently, A1 did not have sufficient time to recourse to the public

[43] *Id.*

[44] Munshi Ram v. Delhi Administration, AIR 1968 SC 702.

[45] Puran Singh v. State of Punjab, AIR 1975 SC 1674; *see also* The Criminal Procedure Code (Act No. 2 of 1974).

[46] *Id*.

[47] *Id*.

[48] *Id*.

authorities as he was unarmed at the time of crime being committed and the deceased had a gun and was in powerful position. There was real apprehension of danger from the deceased based on the past confrontation between the accused and the deceased and therefore the accused had no other option but to exercise his right of private defense to save him and his friends.

1.4.2. There was reasonable apprehension of death or grievous hurt

The person about to be attacked need not to wait for the opponent to give the first blow, he can act in self-defense.[49] Whether the apprehension was real or not, always depend upon the previous circumstances and background in which incidence has taken place.[50] In the present matter, A1 had a threat to his as well as A2's life and more or less a threat on Tanya and Natasha and a person under law has all right to prevent him and others too.[51] It was quite obvious on the part of A1 to apprehend the danger to his life and therefore he acted in such a way. Any reasonable man is not to wait for the attacker to take out the gun and harm him and then retaliate to the same.

1.4.3. That only necessary harm was made

In ***R. v. Bird***, an accused charged of homicide was given the excuse of private defense where she had launched an attack with a glass on a man who merely slapped him and pushed her, because by the time she had realized anything, she had already attacked the victim.[52] The rationale as to whether who is the aggressor is to be observed form the point as who reached

[49] Backwford v. Queen, [1988] 1 AC 130.

[50] Jagdish Chandra v. State of Rajasthan, (1987) CrLJ 649 (Raj).

[51] Att. Gen.'s Reference (No. 2 of 1983), 1984 QB 456; *see also* § 99 of IPC (No. 45 of 1960).

[52] R v. Bird, [1985] 1 WLR 816 (CA).

the spot armed with weapon and would have caused more injuries to the other parties.[53] In this right a comparison of the physical strength of the two parties, i.e. accused and deceased has to be seen.[54] In the present case, the deceased no doubt was stronger than A1 both physically and position wise and he was the one who reached the crime scene with a weapon. The deceased gave a hard beating to the accused and continued to use force; the accused got hold of a metal rod and hit the deceased. He has the right of private defense since it was not possible for the accused to measure exact velocity and he had danger on him.[55]

In the light of the above arguments, it is most humbly submitted before this Hon'ble Court that the accused was acting under his right of private defense, had no *mens rea* and therefore, is not liable u/s 304 of RPC.

2 ACCUSED IS NOT GUILTY U/S 186 RPC

It is submitted before this Hon'ble Court that the defense would humbly plead that the accused are not liable u/s 186 of the IPC. The law clearly states that the postulates for the applicability of this section are: "*(a) There must be an 'obstruction'[56]; (b) The obstruction so caused is caused by the accused; (c) The obstruction caused by accused must be 'voluntary'[57]; (d) The obstruction so caused is to the 'public servant'[58] and (e) The obstruction is caused in the functioning of this servant while performing his 'public duty'*[59]."[60]

[53] Machindra Babu Salve v. State of Maharashtra, (1997) CrLJ 486 (Bom).

[54] Rama v. State of Goa, (1978) CrLJ 1843.

[55] *Supra* note 53.

[56] Safait Hussan v. State of Bihar, (1985) CrLJ NOC 68 (Pat).

[57] Shyamlal v. State of UP, (Criminal Appeal No. 9 of 1962) (SC).

[58] § 21 of IPC (No. 45 of 1860).

[59] Kuldip N Sharma – IPS v. State of Gujarat, (Criminal Appeal No. 1467 of 2011) (Guj).

In the light of these elements, the submissions are made in two limb: **[2.1]** The accused had caused no obstruction; **[2.2]** The deceased was not acting in the capacity of a public servant.

2.1 THE ACCUSED HAD CAUSED NO OBSTRUCTION IN THE INCIDENCE

It is humbly submitted that the accused did not cause any obstruction while the police officer was performing his duty. The term obstruction is not to be construed in the manner very broad but only a voluntary obstruction would amount to attract this section.[61] The offence to be committed u/s 186 is not a mere use of force but '**voluntary**' use of force which means: *(a) the act was done intentionally; (b) the act was done with the knowledge to end as a crime; and (c) the doer believed that the actus reus is or would be an offence.*[62] Moreover, the procedural aspects are also not fulfilled by the prosecution.

As per the facts before the Court, the act of the accused was not done voluntarily but in the urge of self-defence which is also justifiable by the law.[63] Moreover, the other accused imposed no force or a threat of force on the officer who was not even exercising his duty. It is therefore humbly pleaded that the two accused must be acquitted of the offence.

2.2 THE ACCUSED WAS NOT ACTING IN THE CAPACITY OF A PUBLIC SERVANT

2.2.1. Deceased had a personal grudge with the accused and acted in furtherance of it

It is humbly contended that the deceased intentionally tried to provoke the accused. It is to be taken into consideration that the deceased had a background of no good character and had been tried for and suspended for encounter of local goons. Moreover, the deceased along with

[60] Udayanath Barik v. State of Orissa, (1989) CrLJ 2216 (Ori).

[61] Narayan Rajun v. Emperor, AIR 1924 Mad 760.

[62] RATANLAL & DHIRAJLAL, THE INDIAN PENAL CODE, (33rd Ed., 2011), p. 233.

[63] **§** 96 of IPC (Act No. 45 of 1960).

Dinesh and the accused were close to and supported the opposite political parties.[64] Moreover, considering the relations in rival parties and the deceased had already threatened the two accused on 30th Mar '16 after a fight with Dinesh and Peter. Earlier too, he had given a threat to the accused and his statement coupled with his actions, background and history were enough to make the accused apprehend for a threat to his life.

Therefore, it is submitted that the deceased had done everything because of his personal grudge and the accused are not liable u/s 186.

2.2.2. The act of policeman is not justifiable by law

It is humbly contended that the policemen are expected to perform their functions in the colour of their public duty only.[65] The post mortem report reveals that the deceased had high level of alcohol and toxins present in his body and this must definitely have hindered his capacity to think and act. Subsequently, in the present matter, the unjustifiable acts of the deceased specifically towards the accused in multiplicity took away the true face of justice for which the accused had to use force and hence there was no offence u/s 186 committed due to lack of good faith of the deceased.[66]

Therefore, in the light of the above arguments, it is most humbly submitted before this Hon'ble Court that the two accused are not liable u/s 186 RPC and should be acquitted of all the charges.

[64] Case Data, ¶16.

[65] Lilla Singh v. Queen-Empress, (1894) 22 Cal 286.

[66] PP. v. Madhava N Honjo, (1916) 17 CrLJ 481 (Bom).

PRAYER

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

1. **Acquit** Abhishek of the offence of committing obstructing a public servant in discharge of public functions and Culpable Homicide not amounting to murder under Sections 186, 304/34 of the Rabat Penal Code.

2. **Acquit** Angad of the offence of committing obstructing a public servant in discharge of public functions, Culpable Homicide not amounting to murder and abetment of a thing under Sections 186, 304 & 107/34 of the Rabat Penal Code.

3. **Acquit** Dushyant of the offence of committing Culpable Homicide not amounting to murder and abetment of a thing under Sections 304 & 107/34 of the Rabat Penal Code.

AND/OR

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

All of which is most humbly and respectfully submitted.

Place: Mavada *S/d*_____

Date: **COUNSEL FOR THE DEFENCE**