

IN THE COURT OF SESSIONS, MAVADA, JAGUTAR

TEAM 16

S.C. NO. 101 OF 2016

CHARGESHEET NO. 17/2016

FIR NO. : 003113

IN THE MATTER OF:

State of Jagutar

...Complainant

V/s.

1. Abhishek
S/O Mr. Jiwan Lepat
Age: 23

2. Angad
S/O Jitendra Lepat
Age: 26

3. Dusyant Loki

...Accused

CORAM: His Honour The Additional Sessions Judge XYZ

DATE: 10th September, 2015

ACT: Indian Penal Code,1862; Criminal Procedure Code, 1973; Indian Evidence Act,1872; Indian Telegraph Act, 1885.

J U D G M E N T

1. A chargesheet has been filed against Abhishek (herein referred to as Accused No.1) u/s 186 and 304 r/w 34 , Angad (herein referred to as Accused No.2) 186 ,304 and107 r/w 34 and Dusyant (herein referred to as Accused No. 3) 304 and107 r/w 34 faced trial on the allegations that they intended to kill the police Inspector Amit Choudhary (herein referred to as Deceased). It has been alleged that Accused No.1, on April 7, 2016 had murdered and obstructed a police inspector punishable u/s 186and 302 of RPC, 1860. Accused No.2 is charged for abetment punishable u/s 107 for instigating Accused No.1 ,186 and 302 of IPC, 1860 The prosecution case against the accused is as under:
2. Accused No.1 and No.2 final year students pursuing Masters in Political Science and Administration from Presidency College. Accused No.1 wanted to be a political leader and therefore was very active in his political career accompanied by his childhood friend Accused No. 2. He was so determined that he can do anything to anyone who comes in his path of political career. He was jealous of Dinesh (son of MLA of ruling party) , therefore he planned to defame him, but then Inspector (deceased) intervened in between where he realized he is a determined person who won't get out of his path so planned to drop him out of his path. On April 7, 2016 Accused No.1 and 2 saw Dinesh (the complaint for filling Fir) and Peter, pounced and threatened them. There in ruckus started, Inspector (deceased) intervened in between. Accused no. 1 picked up a metal rod

and hit it on inspector. Getting this unexpected hit the inspector fell awkwardly and got another hit by the stump of tree.

3. The complainant called the police. Police reached the spot , examined the premises and collected the evidence. The body was sent for post mortem. The results stated that the death due to hemorrhage triggered by blow on head. The body was further sent for forensic examination which disclosed that the death due to blunt force used on the skull.
4. FIR registred against accused persons.The charge-sheet was filed and the accused were ordered to be charged with:
 - a. **Abhishek Lepat**: Section 186/304 r/w 34 of the Rabat Penal Code
 - b. **Angad Lepat (A2)**: Section 304/186/ 107 r/w 34 of the Rabat Penal Code
 - c. **Dusyant Loki (A3)**: Section 304/107 r/w 34 of of the Rabat Penal Code

The charge-sheet was submitted to the CJM and the case was committed to the Court of Sessions

The charges were read over to the accused. They pleaded not guilty and claimed trial

Witness

Prosecution

Prosecution had examined these witnesses:

Doctors/Experts:

1. Dr. Kalra – Doctor who conducted the Post Mortem (PW-1)
2. Dr. Russell – Coroner (Pathologist) (PW-2)

Police Official:

3. Hardik Bhatia –Investigation officer (PW-3) , recorded witness Statement of complainant Dinesh , arrested the accused under Panchanama (Annexure 2), sent the deceased to Rabat City Hospital for post-mortem, recorded statements of both the Accused.

Complainant

4. Dinesh (PW-4)

Other

5. Peter (PW-5)
6. Jatin – Worker at the auto garage shop (PW-6)

Defence

1. DW1 : Abhishek Lapat, the accused
2. DW 2 : Angad Lapat , the co-accused and childhood friend of accused
3. DW 3 : Dusyant Loki , the co-accused and local leader of Collective Party of Rabat
4. DW 4 : Tanya , junior from same college as accused
5. DW 5 : Natasha, junior from same college as accused

Prosecution version

The Counsel stated a famous adage “*Mens lie but circumstance do no lie*” wherein they brought in light the essence of manslaughter of public servant on duty asserting the presence of two fold ingredient of murder i.e mens rea and actus rea. The counsel humbly asserted the malice on the part of :

- (I) accused 1 for to become a political leader and impress his political masters
- (II) accused 2 for sharing the common intention to remove the inspector from path
- (III) accused 3 for instigating accused 1 to kill the deceased for being an obstruction on the path of his party’s rising future.

The counsel relied on *Virsa Singh v State of Punjab*¹ to bring home the charge of murder unfolding the two establishing motive which prompts intention (crucial piece of murder) through *Shabir Ahmad khan v State of J&k*². It further contended for veraciously charging the accused for obstruction of public servant as the accused 1 & 2 were prepared for confrontation with police by pouncing and threatening PW-4 and PW- 5 and accused 2&3 guilty of intentional aid and conspiracy wherein adherence was made on to *Raghunath Das*³. It stated advice amounts to instigation if it

¹ [1958] AIR (465) SC

² [1989] 3 Crimes 396

³ [1920] 5 PLJ 129

was meant actively to suggest or stimulate the commission of an offence. The Prosecution had examined its witness i.e PW 1, 2, 3, 4, 5 and 6

The Prosecutor contended that the prosecution has proved their case to the hilt leaving no reasonable doubt. He argued that the testimonies of prosecution witness, browsing history, telephonic conversation and medical reports establish a chain of events that point towards the guilt of the accused. Thereby counsel reverentially submits that the accused persons i.e, Abhishek Lapat, th Worker at the Auto Garage No. 3 respectively) are guilty of all the charges brought against them.

Defence Version

The counsel brought forward the act of Accused 1 under the jacket of self defence. The counsel stated the apprehension of fear of death under self defence when deceased inspector was going to pull out gun from his holster. The counsel had examined following witness:

DW 1 (Accused 1): Abhishek Lapat pleading before the honorable court that his act was under an apprehension of fear of death

DW 2 (Accused 2): Angad Lapat who is childhood friend of accused 1 and pleading not guilty of instigating the accused 1

DW 3 (Accused 3): Dusyant Loki who is booked for clear instigation to accused 1 by word
The counsel stated the cardinal principle "Accused is innocent until proven guilty" is the essence of criminal jurisprudence and should be followed.

DW 4 : Tanya is a student of Presidency College pursuing graduation in B.A Political Science and Administration, junior to accused no. 1 and 2. She did modelling.

DW 5: Natasha is also a student of Presidency College pursuing graduation in B.A Political Science and Administration, junior to accused no. 1 and 2.

The counsel relied on **Datar Singh v State of Punjab**⁴ for to state the evidences against defence are dubious. It states the pieces of evidence on which the prosecution chooses to rest its case are so brittle that they crumble easily, the superstructure built on such insecure foundations also collapses. The time of occurrence and the location of the alleged crime was a public place

⁴ [1975] 4 SCC 272

which generally has a huge commotion. Indeed the prosecution has not put the best evidence forward. The version of eye-witnesses who were also interested witnesses on account of their relationship with the deceased and being inimically disposed against the person alleged is highly exaggerated.

Further the counsel had put forward for the discontinuity in chain of events relying on **Daya Ram v State (Del Admn)** ⁵ stating any missing link may be fatal to the prosecution with no common intention and participation present, therefore section 302 r/w 34 cannot apply. It is evident from the aforementioned facts that there is no pre agreement and presence of alleged accused in the scene of the crime. Therefore there is lack of common intention.

It contended the prosecution did not prove the cases beyond reasonable doubt which is essential for prosecution to establish, failure leads to defence win.

DEDUCTION FROM WITNESS EXAMINED

Prosecution

1. **PW 1 Dr Kalra:** Doctor who conducted Post Mortem gave a fair result stating death due to Hemorrhage which was triggered by blow on the head.
2. **PW 2 Dr Russell :** Doctor who conducted the forensic examination when examined arose a lacuna by defence as to why date and time for forensic not mentioned . To this prosecution did stated ignorance as the direct evidences like post mortem , call records are sufficient to prove the guilt of accused.
3. **PW 3 Hardik Bhatia (Investigating Officer) :** On being examined the defence asked for the difference in FIR No. wherein the prosecution stated for the presence of typographical error which could be correct as soon as possible.

⁵ [1988] AIR 615 (SC),

4. **PW 4 Dinesh (Complainant)** : He is the eye witness in the aforesaid case . He after examined defense argued that the complaint to have and teasing the accused junior where Prosecution stated no such teasing by Complaint and such allegation was to defame the complaint was a son of MLA of ruling party as always alleged by Prosecution since the start. Prosecution stated Accused no: 1 wanted to be a political leader. He therefore contested College election and became the College Union President. He was discriminated in childhood so had that youth blood to relieve it out. He wanted to have an upper hand in society so wanted to be a political leader by any means.
5. **PW 5 Peter** : He was the companion of the complaint who the defence stated to be teasing the junior of Accused no 1 and Accused no 2 . After being examined Prosecution withheld the defence contention with it's own evident fact that Accused no: 1 wanted to be a political leader.. He wanted to have an upper hand in society so wanted to be a political leader by any means
6. **PW 6 Jatin (Auto Garage Mechanic)** : Another eye witness who had known both the accused 1 & 2 because of their protest and frequent confrontation with Police. On being examined the Prosecution stated that the murder weapon belonged to his shop . The Prosecution asserted through Pw 6 the description of the event which led to the death of Inspector . It stated on 7th April 2007 he saw accused 1 & 2 I fighting with tall guy. They were struggling with this guy. Accused 1 ran towards his shop and picked up a rod hit it on the ground almost taking my feet away and threw it at the tall guy. The rod hit his head and he fell with a thud to the ground. I guess he died instantly. He just didn't move. To this the defence rose no objection which was much needed.

Defence

DW1 Abhishek Lepat (Accused no. 1): He had a guilty mind of eliminating the Inspector (deceased) from it's path of defaming complaint for to become a political leader. Defense counsel

pleaded the jacket of self-defense for such killing was to avoid the fear of death. The act was sudden with no time to think. The Prosecution stated the evidence of call record, browsing history and the conversation of accused 1 with accused 3 wherein accused instigated accused 1 to kill that inspector.

DW2 Angad Lepat (Accused no.2): co-accused childhood friend and was all time in support of accused no. 1. The defense council argued that his action as only to save accused 1. To this Prosecution stated the premeditation possessed by accused 1 and accused 2 by browsing history and established chain of circumstances .

DW3 Dushyant Loki (Accused 3): Local leader of opposition party CPR (Collective Party Of Rabat) . The defense council argued his action was merely words uttered in a fit of rage to which prosecution stated words uttered in fit of rage can constitute instigation with intention to do such act. The Prosecution had established intention on part of accused 1 , 2 and 3.

DW4 Tanya: Student of Presidency College pursuing graduation in B.A Political Science and Administration, junior to accused no. 1 and 2 . A discrepancy arose whether she was actually present.

DW 5 Natasha : Student of Presidency College pursuing graduation in B.A Political Science and Administration, junior to accused no. 1 and 2. She along with DW 4 was close to accused no 1 and 2. She was present with DW4 as she was able to tell where DW1 and DW2 lived even together with the fact she did know the number of bus stop their in their college area when it was contended always she always went by bus.

POINTS ESTABLISHED TO PROVE GUILT OR DISAPPROVE

<i>POINTS</i>	<i>PROVED / NOT PROVED</i>
Obstruction in discharge of public duty	PROVED
Mens rea on part of accused	PROVED
Abetment by Accused 3	PROVED
Common Intention among Accused	PROVED
Self defense	NOT PROVED

REASONS

“Whoever kills a person [innocent person] ...it is as though he has killed all mankind. And whoever saves a life, it is as though he had saved all mankind.”⁶

1. The Prosecution seems to have overruled defence. Well accepted Latin maxim, *Ei incumbit probatio qui dicit, non qui negat* indicates that the burden of proof is on he who asserts, not on he who denies. The Prosecution very well dealt each evidence leaving no ground of hope for defence.
2. The Prosecution had established the chain of events to form the mala fide part on part of accused highlighting the character of accused 1 who wanted to be a political leader and could go to any extent for to achieve it . He considered PW 4 as a obstacle who had a greater probability as a political leader. Therein Inspector (deceased) intervened and warned accused 1 and 2 of their anti national behavior. The accused 1 and 2 realised inspector to be a determined man and for to deal with PW 4 they first need to eliminate

⁶ (Qur’an, 5:32)

the inspector wherein defence contended the objection for no proof beyond reasonable doubt being overruled.

3. In connection to above assertion as Accused 1 and 2 had a premeditated plan to drop out the inspector out of their path. This was for the reason that he was a determined man for whom they had searched had a strict character to eliminate goons . The exhibit no. 4 shows the browsing made for self defence which the prosecution contended to be a part of premeditated plan to remove inspector from their path. To this defense challenged the authenticity of such exhibit. The prosecution stated the the certificate of 65 b of Evidence Act,1872 whereby authenticity is established.
4. The Prosecution got an upper hand by the exhibit 5 call records wherein defence rose a question as when interception started. The prosecution stated the inception started when complainant called police and informed about the crime.
5. Further defense rose a question on forensic report contending the six examinations were requested out of which only two examination were done. The Prosecution agrued that two examination done are the examination which are sufficient to proof the guilt of accused. Besides the defense itself accepting the crime committed.
6. Defence contended that the crime committed by accused was under self defence for he knew that because of his right stand many were full with grudge especially the ruling party and when he got threatning from inspector he was scared for he knew even the police was against him so for his safety as he is into protest, he browsed such provision of self defence. To this Prosecution argued the protest made by accused was antigovernment which could call for any inspector attention. On 7th April , 2016 The inspector was on his duty on good faith to prohibit the ruckus created by accused wherein the accused took an opportunity of removing him from his path, thinking he could be saved under the shade of self defense .

7. Defence argued the lack of fingerprint not submitted before this honourable court which forms the crucial piece of evidence and failure of which is fatal to prosecution . The Prosecution contended that the defence has itself accepted the crime being done by accused 1 as they are pleading for self defence. Therein the question of fingerprint is not needed in the aforesaid cases as it does not form a crucial link.
8. Defence had argued that Dusyant Loki and Angad Lepat are not guilty for abetment as mere association of the accused persons in the case, who are charged with such offence is not a conclusive proof that they have committed an offence of abetment. Further advice per se does not necessarily amount instigation. A mere acquiescence or permission does not amount to instigation.⁷ Herein Prosecution relying on **Prem Narain v. State** ⁸ argued words which amount merely to a permission may perhaps amount to instigation and relying on **Ramabatar Agarwalla v. State** ⁹ brought the charge of instigation.
9. Judged in the background of legal principles set out above tendered by the prosecution clearly bring home the accusations. Conclusion is that prosecution had established the case against the accused and they are entitled to orders of imprisonment. Appeals allowed.

ORDER

1. Accused Abhishek Lepat is guilty under 186 , 302 r/w 34 of RPC and sentenced to rigorous imprisonment for life with a fine of Rs 10,000
2. Accused Angad Lepat is guilty under 186 , 302 & 107 r/w 34 and sentenced to imprisonment for life with a a fine of Rs 5,000

⁷ Ratanlal and Dhirajlal, Indian Penal Code (33rd edn)

⁸ [1957] CrLJ 337.

⁹ [1983] CrLJ Ori 122

3. Accused Dusyant Loki is guilty under 107 & 302 r/w 34 and sentenced to imprisonment for life with a fine of Rs 20,000