

IN THE COURT OF _____

SESSIONS JUDGE, MAVADA

STATE OF JAGUTAR

v.

ABHISHEK, ANGAD & DUSHYANT

1.Abhishek Lepat

S/o Mr. Jiwan Lepat

2.Angad lepat

S/o Jitender Lepat

3.Dushyant

SESSIONS CASE NO. 101/2016

FIR NO. 316/2016

PS: Devision 3

U/S. 304&107 r/w 34/186 RPC

JUDGEMENT

1. The prosecution has filed challan against the accused persons u/s. 304/107/186/34 RPC before the court of Id. MM. The Ld. MM committed this case to the Sessions Judge as the case was exclusively triable by the Court of Sessions.¹ The Ld. Sessions Judge marked this case to this court.²

¹ Sec. 209 CrPC

² Sec. 194 CrPC

2. The trials are conducted by the Public Prosecutor for the State³, and opening of case takes place.⁴

3. The brief facts of the prosecution case are that on 7 April 2016, the police received a complaint from Mr. Dinesh, a student of presidency college, Mavada that Abhishek and Angad, student of the same college had hit inspector Chaudhary with an iron rod and the inspector had fallen unconscious at the bus stop near the College .the police immediately reached the spot and took Chaudhary to the Rabat city hospital, where he was declared brought dead. Abhishek and Angad are childhood friends. They are quite active in the union activities. Abhishek organized two protests at the college. These two protest created wide spread hatred in the college. Tanya and Natasha are final year students and are very close to Abhishek and Angad. They complained to Abhishek that two students regularly tease them at the bus stop. Abhishek and Angad mostly accompanied them to the bus stop during this time they had chased two boys Dinesh and peter several times. Dinesh is the son of an MLA of the ruling party and peter is his friend. This incident happened again on 30th March. Abhishek and Angad started pelting stones on them. Then they exchange some rough words. On the same evening police officer came to threaten Abhishek and Angad, who was Mr. Amit Chaudhary he was involved in the encounter of some goons earlier. Abhsihek and Angad surfed the internet about Dinesh, Peter and Amit chaudhary. Then they went to their friend Dushyant another political leader, discussed everything with him, he instigated them to kill police inspector. They came back and surfed the various provisions regarding legal protection under self-defense and how to provoke police. After a week on 7th April, Dinesh and peter again started teasing girls then Abhsihek and Angad started pelting

³ Sec. 225 CrPC

⁴ Sec. 226 CrPC

stones on them, then suddenly police inspector intervened. Inspector put his hand on the holster, on seeing that, Angad asked Abhishek to run. Abhishek ran and takes a rod lying near auto garage and throws it at the inspector. It hit him on the head, he falls and gets hit on the head again by the stump of a tree and died.

4. Police after being informed rushed to the spot; inspector was taken to the hospital where he was declared brought dead. Abhsihsek was arrested along with Angad & Dushyant. That is how case is registered against accused for an offence under Section 304/107/186/34 of RPC.

5. The charges u/s 304/186/34/107 RPC has been framed against Accused no.1 that is Abhishek, Accused no.2 that is Angad, Accused no.3 that is Dushyant. Charges were framed and read over to the accused to which the accused pleaded not guilty⁵ and claimed that he acted in self-defense.

6. Prosecution has examined witnesses in support of its case.

7. PW 1 and PW 2, those are, Doctor and pathologist respectively deposed that patient had suffered intracranial brain hemorrhage which was triggered by blow on the head, they said there was two distinct fresh injury marks on the skull. Which lead to the victim experiencing a hypovolemic shock leading to victim's death.

8. PW 3 Investigating officer deposed that Abhishek and Angad had hit inspector with an iron rod and the inspector had fallen unconscious at the bus stop near the college .he further deposed that Abhishek and Angad had obstructed inspector from discharging his duties and they met Dushyant who instigated them then they researched on the background of Dinesh, Peter and Amit Chaudhary along with the legal provisions regarding protection against self-defense.⁶

⁵ Sec. 228 CrPC

⁶ Exhibit.5

9. PW 4 and PW 5, Dinesh and peter filed the complaint stating that accused used to threaten them and one day inspector Amit Chaudhary intervened but accused picked up an iron rod and hit on the head of the inspector, the complainant called the police.

10. PW 6 worker at the auto garage shop, deposed that he saw Abhishek and his friend fighting with tall guy, Abhishek ran towards my shop picked up a rod threw it at the tall guy. It hit him on the head.⁷

11. Statements of the accused are recorded u/s 313 Cr.PC. All the allegations of the prosecution were put to the accused but they have denied all the allegations of the prosecution and they pleaded not guilty, Abhishek claimed that he acted in self-defense.

12. Arguments heard.

13. Ld. PP for the state has submitted its contentions primarily on the following;

a) Abhishek and Angad went to Dushyant who asked them to kill the inspector and encouraged them by saying that party will support them and protect them, come what may.

b) Abhishek and Angad surfed the internet to find about Dinesh, Peter and Amit Chaudhary and moreover they surfed about how to provoke police and legal protection under self-defense.

c) Abhishek and Angad started pelting stones on Dinesh and peter to provoke Inspector.

d) When inspector intervened, Abhishek picked up the rod and hit the inspector on the vital part of his body.

14. Ld. PP has submitted that prosecution has established that all the accused pre-planned a murder as Abhishek and Angad went to Dushyant who asked them to kill the inspector by saying that ‘salley ko mar dalo’ and ‘you know what to do and how to defend yourself’. If the accused were so innocent they should have stopped Dushyant but instead of doing that they came back

⁷ Sec. 313 CrPC

and sat together and surfed the internet regarding police action during riots, provocation etc. And various provisions regarding legal protection under self-defense. And prosecution has direct evidence of browsing history of Abhishek's computer. Even Abhishek and Angad admitted in their statements under Section 313 of Cr.PC that they surfed internet about these things.

15. Ld. PP further established the chain of circumstances by stating that Abhishek and Angad in furtherance of their common intention with Dushyant to kill the inspector started surfing the internet and on 7th April they first tried to provoke the inspector by pelting stones at Dinesh and Peter as they already knew that inspector will come to stop them as he did earlier. Then they started fighting with the Inspector and when Inspector put his hand on the gun which was buckled up in his holster as stated by Tanya⁸, point to be noted here that inspector never pull his gun out but then again Abhsihek picked up the metal rod from the garage and hit it on the head of inspector. If Abhishek was so responsible citizen as stated by Dushyant.⁹ He could have handle this situation normally but Abhishek and Angad had a guilty mind so he deliberately picked up the rod which he knew he can get it easily from the garage as he used to go there daily and hit on the vital part of the body that is head by so much force that his head hit twice by the stump of the tree.

16. Ld. PP further submitted that accused pleaded that he acted in self-defense but the right of self-defense cannot be applied as a pretense for justifying aggression for causing harm to Another person, nor for causing more harm than is necessary to inflict for the purpose of defense. And to avail the plea of self-defense there should be apprehension of death in the mind of accused but here in this case there was nothing to cause apprehension of death.

⁸ Sec. 313 CrPC

⁹ Sec. 313 CrPC

17. Ld. PP further submitted that Firstly, as long as a public servant acts legally in the exercise of his official powers, there is no right of private defense against him; for the simple reason that his act is not an offence.

a) Moreover Inspector Amit Chaudhary never transgressed any limit.

b) His act did not cause reasonable apprehension of death or of grievous hurt.

c) Whatever he did was in a good faith.

d) His act is done under color of his office.

e) It was known at time that the act is being done by a public servant as such or under his authority.

18. Ld. PP further argued that if accused is pleading in self-defense, the burden of proof lies on the defense council to prove the existence of circumstances for bringing the case under the exception of murder otherwise the court should proceed according to Section 105 of Rabat Evidence Act, 1872.

19. Ld. PP further pleaded that crime committed by the accused comes under Section 300 clause 3 of RPC, which states that culpable homicide is murder if the act by which death is caused is done with an intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. And in this case injury was sufficient in ordinary course of nature to cause death of the victim.

20. Ld. PP further argued that Dushyant instigated Abhishek and Angad to cause the death, and further he stated that Abhishek and Angad cause obstruction in the police's work.

21. Ld. PP has relied upon the following precedents; in relation to Section 34 prosecution has relied upon the SC judgments in cases like in **Nand Kishore v. State of Madhya**¹⁰, it was held that If the common intention leads to the commission of criminal offence charged each one of the persons sharing the common intention is constructively liable for the criminal act done by one of them & in **Pulla Reddy and Ors. v. State of Andhra Pradesh**¹¹ & **Anil Shrama v. State of Jharkhand**¹²- It was held that Sec 34 is applicable even if no injury has been caused by the particular accused himself. For applying Sec 34 it is not necessary to show some overt act on the part of the accused. **In Krishna v. state of Haryana**¹³- It was held that participation need not in all cases be, by physical presence. **In Reg v. Cruse**¹⁴- In this case, Court involves the doctrine of joint liability and held that each of the member of the group B, C & D are equally responsible for the blow, whether one actually struck it or not.

22. Ld. PP for the state further stated that court can pass the judgment on the testimony of eye witness, as SC in **Ravi v. State represented by inspector of police**¹⁵- dismissing the appeal against conviction of the two accused under Sec. 302, RPC for murder of the deceased, the apex court held that as general rule, a court can and may act on the testimony of a single witness, though uncorroborated.

23. In **Biran Singh v. State of Bihar**¹⁶, the apex court held in this case that even assuming that the deceased had inflicted simple injuries on the accused, there could be no justification for any of the accused to hit the deceased with a sword on a vital part on the body such as head. The

¹⁰ (2011) 12 SCC 120

¹¹ AIR 1993 SC 1899

¹² (2004) 5 SCC 679

¹³ 1994 AIR 2536

¹⁴ 1838 C&P 541

¹⁵ AIR 2009 SC 214

¹⁶ AIR 1975 SC 87

severity of the injuries could not be said either to have been a matter of chance. There acts bore a stamp of design. The right of private defense, therefore could not be availed by the accused.

24. In Virsa Singh v. State of Punjab¹⁷- It was held that in the absence of any circumstances to show that the injury was caused accidentally or unintentionally, it had to be presumed that the accused had intended to cause the inflicted injury and the conditions of (3) of Section 300, RPC were satisfied. Conviction under Section 302, RPC was upheld. This judgment was reaffirmed in these cases also; **Rajwant and Ors. v. State of Kerala¹⁸**. In **Anda v. State of Rajasthan¹⁹**-

25. I have gone through the aforesaid judgments. All the aforesaid judgments have been relied upon by the prosecution.

26. Ld. Counsel for the accused has submitted that the prosecution has failed to prove its case beyond reasonable doubt against the accused. He has submitted his contentions basically on following points:

- a) No motive of alleged crime has been proved
- b) Accused no.2 and accused no.3 never instigated.
- c) Accused acted in self-defense.
- d) Accused never Obstruct the inspector in discharging of his functions.

27. Ld. Counsel for the accused has primarily objected that the accused has no motive to commit the alleged crime, and further the prosecution has miserably failed to evince the motive of the accused as to why would the accused even commit the alleged murder when everyone knew that by doing this their political career will be destroyed. They never made a plan to murder the victim, Dushyant didn't even know the inspector and enmity is something very far.

¹⁷ AIR 1958 SC 465

¹⁸ AIR 1966 SC 1874

¹⁹ AIR 1966 SC 148

Neither there is any cogent evidence to prove Dushyant's presence nor the eye witness ever stated that the accused no.3 was present there at the time of incident. Dinesh, Peter and Inspector chalked out a plan to kill Abhishek and Angad. They wanted to murder them and give it a color of Encounter, otherwise Inspector should have helped girls, but he did not. Rather than threatening Abhishek and Angad, he should have warned Dinesh and Peter as they were teasing girls. Abhishek and Angad surfed internet just to know the relations between Dinesh, peter and inspector.

28. Ld. Council for the accused further argued that inspector was also briefly suspended in an encounter case where he killed some local goons. Not only he had a shady character but he was also a habitual drinker and on 7th April he was inebriated also. Which is proved by forensic report.

29. Ld. Council for the accused examined witnesses in favor of their case, DW1, DW2, DW4 and DW5 stated²⁰ that Dinesh and Angad used to tease girls daily. Dinesh was the son of MLA he had links with inspector. On 7th April they were just standing near the bus stop, again Dinesh and peter started teasing girls, to stop them Abhishek and Angad started pelting stones at them from nowhere inspector who was inebriated intervened and slapped Abhishek, caught him by neck and removed his pistol, Angad shouted and asked Abhishek to escape, which created apprehension of death in the mind of Abhishek so he picked up whatever came to his hand and threw it on the inspector. Whatever he did, he did in his self-defense.

30. Ld. Council relied upon various SC judgments as following; that in relation Sec. 34, it cannot be invoked because in **Sheoram Singh v. State of UP**²¹- the SC held that unless there is

²⁰ Sec. 313 of CrPC

²¹ AIR 1972 SC 255

cogent evidence and clear proof of such common intention, an accused can't be vicariously held guilty. **Prabhu Babaji Navle v. State of Bombay**²², SC held that mere presence or rushing to the spot at the time of occurrence; in the absence of any other evidence as to conduct doesn't suffice as part of common intention to participate in the crime. Had there been any intention Angad would have never come empty handed, in relation to the act done by accused SC In **State of Orissa v. Ghenu**,²³ held that there was imminent danger to the person of the respondent and as such he has the right to private defence of his person. In **Phudki v. State of U.P**²⁴ the first ingredient of this Section 186(RPC 1860) is missing as the word obstruction denotes some overt act. In the nature of violence or show of violence, but Abhishek never showed any violence towards inspector. Moreover inspector was in civil dress even inebriated.

31. I have heard Ld. PP for the state, counsel for the accused person and perused the record carefully.

32. I also agree with the contention of Ld. PP, he has contended that all the proved circumstances give rise to a complete chain of events which unerringly point to only one direction, i.e. it is the accused and nobody else who had committed the crime.

33. I also agree with the contention of Ld council for the accused that inspector was inebriated.

34. Keeping in view the discussions made above I have come to the conclusion that all the links in the chain of evidence produced by the prosecution are neither missing nor broken. Direct evidences given by the prosecution those are call recordings, weapon of murder, browsing history, holds more weight than the contentions of defense. There is no. of discrepancies in the statement of defense witnesses. Testimony of eye-witnesses, which is otherwise convincing and

²² 1956 SC 51

²³ 5 August 1991

²⁴ June 15, 1954

