

TEAM CODE:

SURANA & SURANA NATIONAL TRIAL ADVOCACY
MOOT COURT COMPETITION, 2018

NEW LAW COLLEGE, BHARATI VIDYAPEETH UNIVERSITY, PUNE

Before

THE COURT OF SESSION, PUNNAI

C.C. No. 100 Of 2018

IN THE MATTER OF

STATE OF SARDAM

PROSECUTION

v.

DEVEN & JEYANT

DEFENCE

FOR OFFENCES RELATING TO

HUMAN BODY & CRIMINAL INTIMIDATION, INSULT AND ANNOYANCE

UNDER §§ 307, 354D, 325, 355, 504 & 509 OF THE BARAT PENAL CODE, 1860

WRITTEN SUBMISSIONS ON BEHALF OF THE DEFENCE

—DEVEN & JEYANT—

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TABLE OF ABBREVIATIONS

¶/¶¶	Paragraph/Paragraphs
§/§§	Section/Sections
&	And
AIR	All India Reporter
BPC	Barat Penal Code
CrLJ	Criminal Law Journal
CrPC	Code of Criminal Procedure
HC	High Court
Hon`ble	Honourable
JCC	Journal of Criminal Cases
KLT	Kerala Law Times
LR	Law Reporter
MPWN	Madhya Pradesh Weekly Notes
No.	Number
Pg.	Page
PLR	Punjab Law Reporter
Re.	Reference
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
v.	Versus

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STATEMENT OF JURISDICTION

The PROSECUTION (State of Sardam) has humbly submitted the complaint, concerning offences relating to Human Body & Criminal Intimidation, Insult and Annoyance, to the Territorial Jurisdiction of the Hon'ble Court of Session at Punnai, pursuant to § 177 read with § 209 of the Code of Criminal Procedure, 1973.

Thereby, the DEFENCE submits this memorial which sets forth the facts & the laws on which the arguments are based.

STATEMENT OF FACTS**BACKGROUND**

Union of Barat, a developing nation, is infamous for increased crimes in respect of jilted lovers and the way in which the issues are communalised. Deven and Pooja studied in the same college in Vanjiyur, Sardam. Both developed friendship and later an affectionate relationship by travelling in the same bus daily but had a caste disparity. Jeyant, a distant relative of Pooja, who used to study in adjacent college, was interested in her and used to warn her about her friendship with Deven. Three of them moved to Punmai after getting employment there. Gradually, communication between Deven and Pooja reduced. Pooja aspired of becoming an air hostess and this idea was endorsed by her friends, particularly Kavita, who also made fun of Pooja's choice of male friends, Deven and Jeyant. As a result, Pooja severed her relations with Deven. She blocked his number but Deven didn't stop calling her and started standing outside her office.

On June 9th, 2017, Pooja and Deven met in a restaurant. However, after listening to her plans, Deven started dissuading her. In a heated conversation, Deven abused her and commented on her character and clothes. As a result, Pooja slapped him. Later, Deven went back home drunk and called Pooja. Next day, Pooja agreed to meet him.

OCCURRENCE

On June 12th, 2017, Deven met Pooja at the metro station while Jeyant and Kavita stood at a distance. He took out an apple and a knife. Seeing the knife, Jeyant and Kavita panicked. Jeyant threw a stone at Deven which injured him. On seeing this, the public approached Deven. Deven then held the knife against Pooja's neck. Jeyant threw another stone, Deven tried to run pulling Pooja along and the knife slashed her neck and she fell unconscious. Meanwhile, the public started beating and kicking Deven who also fell unconscious. The police arrived and took over the situation.

SURANA & SURANA NATIONAL TRIAL ADVOCACY MOOT COURT COMPETITION**STATEMENT OF CHARGES**

CHARGE I:

Deven (“A1”) has been charged with §§ 307, 354D and 509 of the Barat Penal Code, 1860 for the crime of attempt to murder; stalking; and word, gesture or act intended to insult the modesty of a woman, respectively.

CHARGE II:

Jeyant (“A2”) has been charged with §§ 325, 355 and 504 of the Barat Penal Code, 1860 for the crime of voluntarily causing grievous hurt; assault or criminal force with intent to dishonour a person, otherwise than on grave provocation; and intentionally insulting to provoke breach of peace, respectively.

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SUMMARY OF ARGUMENTS

**ISSUE I: DEVEN (“A1”) IS NOT LIABLE UNDER §§ 307, 354D AND 509 OF THE
BARAT PENAL CODE, 1860.**

Charge I: § 307 BPC: It is most humbly submitted that the accused is not liable for offence under § 307 BPC as he did not have the intention to murder the victim which is the gravamen of the offence.

Charge II: § 354D BPC: It is submitted that the accused is not liable under § 354D BPC. The prosecutrix never indicated disinterest nor did the relationship between them end.

Charge III: § 509 BPC: It is humbly submitted that the defendant is not liable for an offence as under § 509 BPC as he never uttered any word with intention to outrage the modesty of the prosecutrix.

**ISSUE II: JEYANT (“A2”) IS NOT LIABLE UNDER §§ 325, 355 AND 504 OF THE
BARAT PENAL CODE, 1860.**

Charge I: § 325 BPC: It is most humbly submitted that the accused is not liable for an offence under § 325 BPC as his act was an exercise of private defence, with abstinence of intention to hurt the complainant.

Charge II: § 355 BPC: It is submitted that the accused is not liable under § 355 BPC as he did not assault the complainant with intent to dishonour him. It was the complainant who provoked the defendant which led the latter to act in self defence.

Charge III: § 504 BPC: It is submitted that the accused never insulted the complainant so as to provoke breach of peace and hence, he is not liable for an offence under § 504 BPC.

ARGUMENTS ADVANCED

ISSUE I: DEVEN (“A1”) IS NOT LIABLE UNDER §§ 307, 354D AND 509 OF THE BARAT PENAL CODE, 1860.

It is humbly submitted that Deven (“A1”) is not liable for attempt to murder under § 307; stalking under §354D; and for Word, gesture or act intended to insult the modesty of a woman under § 509 of the Barat Penal Code, 1860 (“BPC”).

Charge I: Attempt to murder under § 307 BPC:

1.1.To constitute an offence under § 307, two ingredients of the offence must be present:-

- a) an intention of or knowledge relating to commission of murder; and
- b) the doing of an act towards it.¹

A. Intention or Knowledge:

1.2.Under § 307, the intention, i.e., *mens rea*, precedes the act attributed to accused.

Therefore, the intention is to be gathered from all circumstances; and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.²

1.3.It has been held that no conviction under § 307 of BPC is legally permissible unless the prosecution proves the ingredients of § 300 BPC in which intention or knowledge play a vital role.³

¹ Parsuram Pandey & Ors. v. State of Bihar, (2004) 13 SCC 18; Prakash Chandra Yadav v. State of Bihar (2007) 13 SCC 134.

² Hari Kishan v. State of Haryana, AIR 1988 SC 2127.

³ Abdul Wahid v. State of U.P., 1980 CrLJ (NOC) 77 (All).

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This implies that to establish offence of attempt to murder, intention or knowledge to commit an act which:

- a) is sufficient to cause death in the natural and ordinary course of nature; or
- b) In all probability cause death or bodily injury likely to cause death when act is imminently dangerous.

1.4. After the argument in the restaurant on June 9, 2017, Deven called Pooja in the night with intention of apologizing for his behaviour resulting out of the heat of the moment. Then, Pooja on her own texted to meet him at the Indira Nagar metro station.

1.5. On June 11, 2017, Deven reached the metro station and met Pooja but did not anticipate the fact that Jeyant was hiding at a distance. In order to remind Pooja of the good old days from where their story began, Deven, owing to his habit, took out an apple and a knife to cut it, from his bag. Moments later, Deven was startled as a stone hit him on his head. Deven bled relentlessly and as he gained consciousness he saw Jeyant, along with others, charging upon him. In order to defend himself from lynching, he approached Pooja and asked her to save him. As Pooja didn't reply and the mob came closer he hid behind her and asked the crowd not to approach any further. Pooja panicked, and tried to escape, whereby, in this attempt, owing to the scuffle that she initiated; she got injured and fell on the ground. Deven, astonished to see the girl that he loved in that state, stood motionless, as a result of which Jeyant, along with the crowd attacked him. This incident does not point towards the intention of the accused to murder Pooja. In fact, the accused had asked Pooja to meet in a public place and if he had any evil intention to kill her, he would have asked her to meet at some secluded place.

1.6. Under such circumstances: The words "under such circumstances" have nothing to do with the question, whether the act committed by the accused could or could not cause death, but relate to the nature of the offence which the accused would have committed, if

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his act did cause death.⁴ The phrase has to be read in conjunction with “such intention or knowledge”.⁵

1.7. In the present case, it was the intervening circumstances which led to the unfortunate incident. It was the throwing of stone and the hue and cries created by Jeyant which threatened Deven and led him to take an action to save himself. In a case, the accused was accosted by three villagers. After being questioned by them, he pointed a pistol towards them and they stepped back. When they were at a distance, the accused fired several rounds and then ran away. The Court held that, it appeared that the accused discharged his pistol in order to scare away the villagers who were 100 yards away from him. It was opined that it was not possible to hold that the accused had the *mens rea*, i.e., he had intended to cause death, or knew that, in circumstances, his act of firing was going to cause death, to any of the villagers and hence, he was acquitted of the charge under § 307 BPC.⁶

1.8. The law is settled through a catena of cases⁷ that in the offence under § 307, emphasis is more on *mens rea* rather than the *actus reus*. Therefore, it is submitted that no offence under § 307 is committed as intention is absent.

B. Act towards the intention:

1.9. The second ingredient is the act committed towards the guilty intention. To justify a conviction under § 307 BPC, it is not essential that fatal injury capable of causing death should have been caused.⁸ Therefore, offence of attempt to murder is not dependant on

⁴ Bakshish Singh v. State (PEPSU), AIR 1952 Pepsu 138.

⁵ Ratanlal & Dhirajlal, The Indian Penal Code 1860, Pg. 1761 (32nd Ed., LexisNexis Butterworths) (2010).

⁶ Sk. Mansuri Nizamuddin v. State of Bihar, AIR 1955 Pat 330.

⁷ Sunil Paswan v. State of Bihar, 2017 (3) PLJR 194; Hari Singh v. Sukhir Singh & Ors., 1988 SCC (Crl) 984; Jage Ram and Others v. State of Haryana, (2015) 11 SCC 366.

⁸ Jage Ram and Others v. State of Haryana, (2015) 11 SCC 366.

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the nature of injury inflicted. It can be proved even when there is no injury, provided the ingredient of intention is satisfied.⁹

1.10. The determinative question is the intention or knowledge, and not the nature of the injury.¹⁰ The intention of the accused is to be gathered from the circumstances like the nature of the weapon used, words used by the accused at the time of the incident, motive of the accused, etc.¹¹ In the present case, after being struck by the stone, the accused was terrified and gasped for help to Pooja. In order to save himself from the threat, he held Pooja with no intention to hurt her. But due to the scuffle initiated by Pooja, she herself got injured. Therefore, the *actus reus* is absent here.

1.11. Nature of weapon and part of body injured: Deven had a habit of carrying a pen knife with which he used to cut fruits for his easement and not to cause harm to anyone. In a case, where the accused was armed with a *ballam* but never used the sharp edge of it and used only the blunt side of it despite of being attacked by the other party, the Hon'ble Apex Court held that it showed that they had no intention to commit murder. Hence, the pen knife cannot be regarded as a weapon at all, as its nature is only limited to slice the fruits.

1.12. Though neck is an imperative part of the human body but due consideration has to be given to the fact that the neck in itself comprises of various other parts and The Court stated that merely attacking the neck does not establish charge under § 307 and ingredients are to be proved.¹² Hence, on the basis of above contentions and authorities

⁹ The Indian Penal Code, 1860, § 307, Part I.

¹⁰ State of M.P. v. Kashiram, AIR 2009 SC 1642.

¹¹ Supra note 8, at Pg. 3.

¹² Jhumarmal Dudharia v. Maganlal Dhada & Ors., 1976 CriLJ 1355.

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cited, it is submitted that the offence of murder under § 307 BPC is not made out against the accused.

Charge II: Stalking under § 354D BPC:

1.13. Stalking is a form of harassment comprising of repeated persistent following with no legitimate reason and with the intention of harming, or so as to arouse anxiety or fear of harm in the person being followed.¹³ To convict a man for the offence of stalking, any of the conditions given in § 354D (1) are to be proved by the prosecution beyond reasonable doubt. However, an accused can take the defence of any of the conditions mentioned in the *Proviso* of the Section to get out of the ambit of the offence of stalking.

1.14. To constitute the offence of stalking, following ingredients are required:

- a) Following a woman and contacting her or any such attempt,
- b) To foster personal interaction repeatedly
- c) Despite clear indication of disinterest by such woman.

A. Absence of following the prosecutrix:

1.15. In the present case, first ingredient is absent as Deven never committed the *actus reus* required for stalking. He did not follow Pooja since a romantic affair existed between the two. When they both moved to Punnai, both got busy with their respective jobs. It is admitted that Pooja was busier than Deven because of her job. However, Deven regularly called her but Pooja used to be busy and didn't pick up the calls. The point which needs to be duly noted here is that the relationship between the two was still in existence. Moreover, the fact that the accused used to stand outside the office of the prosecutrix does

¹³ Ratanlal & Dhirajlal , The Indian Penal Code 1860, Pg 1978 (32nd Ed., LexisNexis Butterworths) (2013).

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not come under the purview of ‘following a woman’ as given under § 354D BPC because they both were in a relationship and the accused was concerned about her.

1.16. On June 9, 2017, when they both met in the restaurant, they got indulged into a heated argument and Pooja slapped the accused and asked him not to contact her anymore angrily. Deven did not even get a chance to apologize to her as she asked him to leave which made him feel humiliated. Since the accused wanted to apologize for his behaviour, he called Pooja on the same day. When Pooja picked up, he sincerely apologized and requested her to meet him one last time. But Pooja disconnected the call but the next day she herself messaged him to meet at the metro station. This fact proves that the prosecutrix also wanted to meet the accused. Her intention was to sever the ties with him¹⁴, which implies that the ties between them were still present.

B. No attempt to ‘foster’ interaction:

1.17. The second ingredient is ‘to foster personal interaction’. As per Oxford Dictionary, ‘to foster’ means ‘to encourage the development of something’¹⁵. The present case lacks this ingredient also. The accused was not trying to develop any interaction with the prosecutrix as there was already interaction between them. Though the fact sheet states that mostly she never called back,¹⁶ it implies that she used to call back. Moreover, she changed her number on the instance of Jeyant and not on her own. Pooja was heavily influenced by Jeyant and Kavita. Jeyant had told her earlier that he would keep a watch on her movements as he was against her relationship with the accused due to caste disparities and also because he was interested in Pooja.¹⁷ Hence, it was not the prosecutrix

¹⁴ Moot Problem, ¶15.

¹⁵ Oxford Advanced Learner’s Dictionary, Pg 643 (7th Ed., Oxford) (2008).

¹⁶ Moot Problem, ¶6.

¹⁷ Moot Problem, ¶3.

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who wanted to sever ties with Deven but Jeyant (because of jealousy) and Kavita (who used to make fun of Pooja's relation with Deven).

C. Lack of 'clear' indication of disinterest:

1.18. The third ingredient states that there should be clear indication of disinterest by the woman. However, in this case, there was no such 'clear' indication. The prosecutrix kept the accused in ambiguity. Sometimes she used to take his calls and sometimes she did not. She came to meet the accused at the restaurant and then at the metro station on her own will, without any coercion or influence. Therefore, all the ingredients of § 354D BPC are absent and the accused is not liable for stalking.

D. Conduct of the accused was reasonable and justified:

1.19. It is submitted that the conduct of the accused in the present case was reasonable as well as justified. Aiyar's defines 'reasonable' as 'fair, proper; moderate under a particular circumstance'¹⁸. According to The Law Lexicon, 'Justify' means 'to make out or establish according to law'¹⁹ and as per § 79 BPC, an act is justified by law if it is validated, warranted or made blameless by law.²⁰

1.20. Deven and Pooja used to be on good terms with each other for a long time. However, after one year passed in Punmai, Pooja's behaviour towards Deven showed a drastic and sudden change. The relations b/w them got strained and in such circumstances, it was reasonable on part of the accused to try to contact Pooja and know the reasons for the sudden estrangement. Deven acted like any normal and prudent person would act in similar circumstances and hence, his conduct was fair and reasonable. Therefore, the accused is not liable for stalking.

¹⁸ P.R. Aiyar, Concise Law Dictionary, Pg 1076 (5th Ed., LexisNexis) (2014).

¹⁹ P.R. Aiyar, The Law Lexicon, Pg 1032 (2nd Ed., Wadhwa) (2007).

²⁰ The Indian Penal Code, 1860, § 79; Raj Kapoor v. Laxman, AIR 1980 SC 605.

Charge III: Word, gesture or act intended to insult the modesty of a woman under § 509**BPC:**

1.21. The ingredients of § 509 have been laid down by the Hon'ble High Court of Calcutta²¹ as follows:

- a) The accused uttered some words, or made some sounds or gesture or exhibited any object or intruded upon the privacy of a woman;
- b) The accused must have intended that the words so uttered or the sound or gesture so made or the object so exhibited should be heard or seen respectively by the woman;
- c) The accused thereby intended to insult the modesty of the woman.

A. *Mens rea* absent in this case:

1.22. The indispensable ingredient of § 509 BPC is the intention to insult the modesty of the woman.²² Intention of a culprit has to be gathered from the circumstances and in each and every case, there need not be a direct proof for intention or motive.²³ If the intention is not present, offence is not established irrespective of the fact whether modesty of the woman is outraged or not. In the present case, the accused never intended to insult the prosecutrix or her modesty or intrude her privacy. When Pooja came to the restaurant on June 9, 2017 in a black dress, Deven appreciated her and said that she looked very smart. He portrayed respect for her job and admitted to the same. However, he was upset when Pooja revealed that she was moving to Mumbai and thus tried to dissuade her. He never meant to hurt Pooja or her feelings. Further, the fact that the accused abused the prosecutrix is not

²¹ Sumit Kumar Gupta & Ors. v. State, CRR No. 2947/2011 (13.07.2012).

²² Tarkeshwar Sahu v. State of Bihar, 2006 (3) JCC 1735.

²³ Yelamanchili Vijaya Kumar v. The State, 2014 (2) ALD (Cri) 644.

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enough to make out a case under § 509 BPC. Reliance is placed on the decision of Kerala High Court wherein it was held that mere insult or insulting words, or abuse will not attract § 509 BPC. Merely insulting a woman is different from insulting the modesty of woman. The subject of insult for a prosecution under § 509 BPC must be the modesty of woman and not the woman as such.²⁴

1.23. The accused was fond of the prosecutrix and couldn't even think of insulting her. His *bonafide* intentions can be gathered from his attempts to apologize to the prosecutrix multiple times and from the statement of Dr. Abhay, psychologist of the accused in which he has stated that Deven never showed any signs of hatred towards Pooja or any intention of hurting her.²⁵ Whatever the accused uttered about the character of the prosecutrix was not intended to outrage her modesty. He was just upset as well as angry with her decision. When Pooja slapped him, he did not say or do anything in return and quietly left the place. These circumstances point towards the innocence of the accused.

1.24. Therefore, the gravamen of § 509 BPC is absent, i.e., intention to insult the modesty of the woman, and the accused is not liable for the same.

ISSUE II: JEYANT (“A2”) IS NOT LIABLE UNDER §§ 325, 355 AND 504 OF THE BARAT PENAL CODE, 1860.

It is humbly submitted that Jeyant (“A2”) is not liable for voluntarily causing grievous hurt under § 325; Assault or criminal force with intent to dishonour a person under §355; and for Intentional insult with intent to provoke breach of peace under § 504 of BPC.

²⁴ Basheer & Ors. v. State of Kerala & Ors., Crl. M.C. No. 837/2010 (26.03.2014).

²⁵ Annexure 2, Statement of Doctor, at Pg. XIV.

Charge I: Voluntarily causing grievous hurt under § 325 BPC:

2.1. It is submitted that the accused is not liable under §325 BPC. § 320 BPC provides for grievous hurt and § 322 BPC provides for ‘voluntarily causing grievous hurt’. § 325 provides for punishment for the same.

A. Absence of intention or knowledge:

2.2. In the present case, neither the hurt was caused voluntarily nor did the accused possess any knowledge or intention that his act was likely to cause grievous hurt. Hence, the requirement of this section is not satisfied as in order to be liable under this section, the offender ought to have the knowledge that by his act he is likely to cause grievous hurt²⁶. Though injury has been caused in the present case but as observed by the Hon’ble Supreme Court that even when an injury is described as to be one which endangers the life, the court has to apply its own mind and form its own opinion in regard to the nature of injury, having regard to the factors that should weigh with the court.²⁷

2.3. In the present case, the accused, on request of his friend, accompanied her to the Metro Station where she was to meet the victim. In order to leave his friend in privacy, the accused stood at a distance from the two. During the course of their conversation, the accused kept an eye on the complainant’s movements. The complainant took out a knife from his bag and brought it close to Pooja’s face, which created a reasonable apprehension in the mind of the accused that his friend (Pooja) was in imminent danger. In order to protect her, the accused, like a prudent and reasonable man, picked up a stone to hit the hand of the complainant which was holding the knife so that the knife drops.²⁸

²⁶ Joseph Cherian v. State of T.C, AIR 1953 Trav. Co. 129.

²⁷ Atma Singh v. State of Punjab, 1980 CriLJ 1226 (1228).

²⁸ Annexure 2, Statement of Jeyant, at Pg. XIII.

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Unfortunately, the stone hit the head of the victim. This reasonable apprehension of the accused met its conclusive end when the complainant grabbed Pooja and held the knife against her neck. The accused then threw another stone but in vain as Deven did not stop and slit her throat. To prevent further harm, the accused, along with the crowd, knocked down the victim, thereby stopping him from eloping the situation.

B. Plea of private defence:

2.4. § 96 of BPC provides that nothing is an offence which is done in the exercise of the right of private defence and Part 1 of § 97 states that every person has a right to defend his own body, and the body of any other person, against any offence affecting the human body. The acts of the accused, in the present case, are covered under § 97 BPC. Reasonable apprehension of a threat to a person's life is the gravamen of § 97 of BPC, which has already been met in the above paragraphs. The Hon'ble Court must examine the entire incident in its proper settings to decide the availability of such rights²⁹. In a similar case³⁰ where under certain circumstances a belief was induced in the mind of a son that his Father was cutting the throat of his Mother, the son shot and killed his Father, the Court observed that the son had reasonable ground for believing that this act was necessary for his Mother's defence.

2.5. The right of private defence commences as soon as a reasonable apprehension of danger to body arises from an attempt or threat to commit the offence though the offence may not have been committed.³¹ Holding knife against Pooja's neck was an imminent threat to commit an offence and thence, the right of private defence started, thus, holding the accused not liable under § 325 BPC.

²⁹ Katta Surendera v. State of U.P., 2008 CriLJ 3196 (SC).

³⁰ Rose, (1884) 15 Cox 540.

³¹ The Indian Penal Code 1860, § 102; N.G. Sreedharan & Anr. v. State of Kerala, 1996 SCC (2) 112.

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2.6. To make out a case under § 325 BPC, intention and knowledge to cause grievous hurt are a must. In this case, the intention was not to hurt the complainant but to save Pooja from the apprehended act of the victim. Even a threat is sufficient to exercise the right of self defence. It has been observed that if in view of the manner of attack, a person has a genuine apprehension that the person assaulting him would either cause death or grievous hurt, he would be justified in causing the death of assailant in exercise of right of private defence irrespective of the fact whether the assailant was armed or not.³² Hence, act of accused in this case is nothing but an act of private defence and he is not liable under § 325 BPC.

Charge II: Assault or criminal force with intent to dishonour otherwise than on grave provocation under § 355 BPC:

2.7. It is humbly submitted that the accused is not liable for an offence under § 355 BPC. § 355 is a punitive remedy for an assault or criminal force with intent to dishonour a person, otherwise than grave and sudden provocation. The ingredients are as follows:

- a) Assault or use of criminal force to another person;
- b) Intention to dishonour that person; and,
- c) Such assault should be used otherwise than on grave provocation given by that person.³³

A. Absence of intentional assault:

2.8. Assault is making any gesture or preparation with an intention in the mind of the maker that such gesture or preparation will cause an apprehension in the mind of another

³² B.S. Survada v. State of Gujarat, 1972 CrLJ 1574 (Guj).

³³ Ratanlal & Dhirajlal, The Indian Penal Code 1860, Pg. 1981 (32nd Ed., LexisNexis Butterworths) (2013); State v. Vinod Arya, S.No. 1495/2 (23.01.2013).

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person that the person making it is about to use criminal force on him.³⁴ The accused in this case did not make any such gesture or act. His act was nothing but an exercise of right of private defence. He, along with the others, did run towards the accused but his act had a legal excuse of private defence to it and thus was not an unlawful act.³⁵ Further, criminal force, as per § 351, is an intentional use of force by one person on another, without the consent of that person, in order to commit an offence. In this case, the accused did not intend to commit an offence but prevent the complainant from committing an offence.

B. No intention to dishonour:

2.9.Dishonour as defined by Aiyar's means 'reverse of honour'³⁶, and honour means 'respect and high estimation'³⁷. In order to dishonour a person, the offender ought to be liable for the usage of any words, gestures or any act which create reasonable prejudice to the reputation and respect of a human being in the eyes of the society. In the present case, the accused, after pelting a stone on the complainant, shouted 'Murder, murder....' These words were uttered in order to alarm the public so that they could help him in saving Pooja. The complainant held the knife close to Pooja's face which gave the accused a reasonable apprehension of danger and he acted as a reasonable and cautious person. It has been held that mere infliction of injuries during an assault does not attract Sec. 355.³⁸ The intention to dishonour is the prominent ingredient.³⁹ In the present situation, the

³⁴ Sriram Chandra v. Krushna Chandra, 1970 CrLJ 264 (Ori).

³⁵ Kwaku Mensah v. King, AIR 1946 PC 20.

³⁶ P.R. Aiyar, Concise Law Dictionary, Pg 369 (5th Ed., LexisNexis) (2014).

³⁷ Ibid, at Pg. 588.

³⁸ Anil Kumar & Ors. v. State of Kerala & Ors., MANU/KE/0946/2018.

³⁹ Padmanabhan v. State of Kerala, CRP No. 914/2007 (08.02.2018).

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accused intended to draw the attention of the crowd and nothing more as intention is to be gathered from facts and circumstances. His words never targeted the reputation or dignity of the complainant. Therefore, first and second ingredients of § 355 are not fulfilled and the accused is not liable.

Charge III: Intentional insult with intent to provoke breach of peace under § 504 BPC:

2.10. To attract the offence as under § 504 BPC, following ingredients are to be proved:

- a) intentional insult;
- b) the insult must be such as to give provocation to the person insulted; and
- c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence.⁴⁰

A. Lack of Intentional Insult & Provocation:

2.11. Intention of the accused to provoke break of public peace is enough to constitute offence under § 504 BPC irrespective of the fact whether there occurred actual break of public peace.⁴¹ Hence, the gravamen of the Section is intention and utterer provoking the victim by words to commit an offence.⁴² In the present case, firstly, there was no insult, i.e., (affront; scornful abuse⁴³) by the accused given the circumstances of the case. He merely said ‘murder, murder,...’ in order to save Pooja as he had reasonable apprehension of danger to her life. This was not any abuse targeting the dignity or honour of the alleged victim, but a mere caution to alert the public and save Pooja. This also proves that there was no intention to insult the complainant and provoke him to commit

⁴⁰ Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44.

⁴¹ Jayakrishna Samanta v. Emperor, AIR 1917 Cal 570.

⁴² Muniaswami Naicker v. P. Kanniappa Naicker, AIR 1950 Mad 273.

⁴³ P.R. Aiyar, Concise Law Dictionary, Pg 664 (5th Ed., LexisNexis) (2014).

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any offence. Rather he wanted to prevent the complainant from committing any offence as intention to insult is to be gathered from the circumstances attending insult.⁴⁴

2.12. The insult may be derived by words or conduct. If the insult is by words, the words must amount to something more than mere vulgar abuse.⁴⁵ Intentional insulting giving provocation to cause breach of peace is an offence attracting the §504 of BPC, thus the words used by the accused should not only give insult but also must provoke a man to cause breach of peace or to commit any other offence.⁴⁶ Shouting the mere words '*murder, murder...*', which constitutes a fact, cannot be misunderstood to be an abuse or an insult in any given situation. The words attributed, the gestures accompanying the words used, the object of the insult, the company and the occasion when these words were used which according to his view have all to be taken into consideration in deciding whether the words were such as to provoke a breach of peace.⁴⁷

2.13. Therefore, in light of the above facts and authorities, case under § 504 BPC is not made out as all the ingredients are absent.

⁴⁴ Abdul Aziz v. Md. Arab Saheb, AIR 1935 Cal 736.

⁴⁵ Pukh Raj, (1953) 3 Raj 983.

⁴⁶ Mrutunjaya Pattanaik v. Dahneswar Dalabehora, (1990) 1 Crimes 105 (Ori).

⁴⁷ Karumuri Venkataratnam (In re), AIR 1948 Mad 9.

PRAYER

Wherefore, in the light of the facts stated, arguments advanced and authorities cited, it is most humbly prayed and implored before this Hon'ble Court, that it may be graciously pleased to adjudge, declare and:

- I.** **Acquit** Deven for offence of attempt to murder, stalking and words with intend to outrage modesty of woman under §§ 307, 354D and 509 of the Barat Penal Code, 1860, respectively.
- II.** **Acquit** Jeyant for offence of voluntarily causing grievous hurt, assault or criminal force with intent to dishonour and intentional insult with intent to provoke breach of peace under §§ 325, 355 and 504 of the Barat Penal Code, 1860, respectively.

AND/OR

Pass any other order that it may deem fit in the interest of justice, equity and good conscience.

For this act of kindness, the Prosecution shall duty bound forever pray.

PLACE: Punnai

S/d

DATED: 7th September, 2018

Counsels for Defendants

ANNEXURE-2**STATEMENT OF WITNESSES****(Under Section 161 Cr.PC)****JEYANT:**

I Jeyant, R/o 3 Subhedar Street, Chirapalli, Vanjiyur, Sardam-03, have been working in Punnai for the past one year. I have known Pooja for quite a long time, as she is my relative and an old friend. I also have known Deven for a long time and also that people like him cannot be trusted. I knew this day would come and I have been warning Pooja since College Days. After moving to Punnai, I had been in constant touch with Pooja and her friend Kavita. I observed her ignorance and annoyance for Deven. On 12 June 2017, Pooja asked me to accompany her to the Indira Nagar Metro Station, in order to meet Deven. Thereafter, I saw Deven, Pooja and Kavita talking; Kavita left them and stood in a corner. Pooja and Deven sat on a bench, I was shocked to see Deven taking out a knife, I feared for Pooja's life and in order to save her I threw a stone lying nearby. I saw Deven grabbing Pooja, I panickingly shouted "murder, murder..." to alert the crowd which then ran towards Deven while running I picked up another stone and threw at Deven. Then, Deven held the knife against her neck. He held Pooja very firmly and slit her neck, and she fell unconscious. The crowd then overpowered him and beat him. The Railway staff intervened; they called the local police authority and an ambulance. Pooja and Deven were moved to the Govt. hospital.

KARAN:

I, Karan, resident of Punnai, have known Deven for quite some time. On 9 June 2017 i.e., Friday, I met Deven on my way back home. I was shocked to see Deven in a depressed state, which was highly uncertain for a person of Jolly nature like that of Deven. After a lot of prodding, Deven broke down and finally narrated me the whole incident which had happened with him and Pooja in the restaurant. Deven was purely heartbroken as Pooja did not reciprocate the same amount of fondness which he had towards her. I took him to a nearby restaurant. Looking at his depressed state I ordered some alcohol for us. I dropped Deven back to his flat and I went back to my place.

KISHORE:

I am Kishore, Deven's roommate. We share our residential place for the past one year. Deven hailed from Vanjiyur which is near to my home town and because of this we got along very well and became good friends. Deven was very humble and modest person, he often used to offer me and the people he knew some fruits. But Deven had issues in his relationship with Pooja due to which he used to remain worried. He was always concerned about her safety and well being. On 9 June 2017 i.e., Friday, at around 11:45 PM, while I was watching TV, Deven got back home in a miserable state, and was drunk. I tried to enquire about what was wrong with him to which, he explained me whatever happened with him and Pooja in the restaurant. He then called her to meet for one last time and told me that he will offer her an apple to Pooja for one last time and thereafter, I went to sleep.

ALEX:

I have been working at the Taj restaurant for quite some time. On 9 June 2017, that is Friday, both Pooja and Deven came down to the restaurant. The boy looked happy meeting the girl. They ordered some snacks and I took their order, and while doing so I overheard the boy complimenting the girl. There was nothing peculiar about them until something happened between the two. I overheard the girl (Pooja) (as she was at the peak of her voice) ridiculing the boy (Deven). Thereafter the girl (Pooja) became angry and slapped him (Deven) and the boy was humiliated, and quietly left the place.

MAGISTRATE:

I was present at the hospital. Statements of Pooja and Deven were recorded in my presence. Both of them were injured and Pooja especially could barely speak and gave a short statement.

DR./PSYCHOLOGIST:

My name is Dr. Abhay and I am a psychologist at Punmai. Deven was my patient. He came to me a few months ago and was battling with depression, anxiety and insomnia. He was also suffering from psychological trauma. I was treating him and developments in his personal life were not helping him at all. But Deven was not an aggressor and even after

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multiple sessions he did not ever give any sign of hatred towards Pooja nor did he show any intention of hurting her.

MR. PANDIDURAI:

My name is Pandidurai and I absolutely condemn the incident that took place at Indira Nagar metro station on 12th of June and I will be vocal about the fact that this was all a plan of the opposite party which was implemented by their supporter Jeyant. I have heard about the incident and Deven never attempted to injure Pooja but Jeyant created a scene out of small pen knife and instigated the public to beat Deven to death. This is an attempt to sabotage the whole community by playing dirty games by corrupting the youth and future of the country.

(Under Section 164 (Cr.PC)**DEVEN:**

I Deven, have known Pooja since my college days. She is from Chirapalli, and we stayed in the same locality and commuted in the same bus. I always carried a pen knife in order to cut the fruits that I use to carry regularly and in fact this is how my friendship with Pooja started when I first offered her some cut-pieces of fruits. We became good friends and came closer to each other. After the completion of our courses we both got employed in Punnai. Over the period of one year we continued to meet but the frequencies reduced due to our different work timings. I used to call her on regular basis to make sure everything was fine with her. Kavita was a close friend to Pooja who would often suggest her many things about the choices in her life. Suddenly, I observed a drastic change in her attitude towards me. She did not communicate anything and her phone was switched off or out of reach. I was disturbed as our relationship was not going well, and due to the same reason I was consulting a psychologist. On 9 June 2017 i.e., Friday, she invited me to meet her at the Taj restaurant. She revealed her plans of becoming an Air-hostess and moving to Mumbai with Kavita. I advised her to rethink about her decision and to continue with her current job. In reply she insulted me and told me that I have a backward thinking. She got furious and slapped me. This created a scene in the restaurant. I was humiliated and left the place in embarrassment. On my way home, I met my friend Karan. Looking at me Karan enquired what was wrong and in my reply I told him everything. He took me to a restaurant nearby and ordered some

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liquor. By the time we left the place I was quite drunk. Karan dropped me at my place. I called Pooja for forgiveness and asked her to meet me for one last time. The next day, she agreed to meet me, at Indira nagar Metro station. I reached the Metro station by 9:30 am, 15 mins later I saw Pooja arriving with Kavita, I requested Kavita to give us some privacy, I did not anticipate the fact that Jeyant was hiding close by and watching everything. Meanwhile, I requested Pooja to sit on the bench nearby. Remembering the good old happy college days and our time in the bus, I as a gesture of forgiveness offered her an apple from my bag and in order to cut the apple, I took out my pen Knife. Suddenly I was hit by a stone that was thrown at me by Jeyant and I started bleeding, I cried Pooja for help, Jeyant, started shouting "*murder, murder*", as result the public panicked and started running towards me. Jeyant picked up another stone and hit me. I panicked after seeing everybody and stood behind Pooja. I tried to pull her near and was asking to help me and in the process, the knife touched her and left her injured. She fell unconscious, I was worried for Pooja, but Jeyant along with the mob pinned me down and started hitting me, and then I fell unconscious.