

TEAM CODE-

**SURANA AND SURANA NATIONAL TRIAL ADVOCACY MOOT COURT
COMPETITION, 2014**

BEFORE THE COURT OF SESSIONS OF BAMBI, THANE

S.C. No. 123 of 2014

STATE OF BAMBI

(PROSECUTION)

V/S

1.PANNA 2.SABA & 3.JAIMIL

(DEFENCE)

FOR THE OFFENCES CHARGED

UNDER SECTION 120 B READ WITH 34, 501, 502, 227 AND 385 OF BARAT PENAL CODE, 1860

MEMORIAL FOR PROSECUTION

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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
Cr.P.C.	Code of Criminal Procedure
Del	Delhi High Court
DW	Defence Witness
Ed.	Edition
IPC	Indian Penal Code
LW	Law Weekly
Mad	Madras High Court
Ori	Orissa High Court
p.	Page No.
P&H	Punjab and Haryana High Court
Pat	Patna High Court
PW	Prosecution Witness
Raj	Rajasthan High Court
SC	Supreme Court
SCC	Supreme Court Cases
Sec.	Section
v.	Versus

INDEX OF AUTHORITIES

CASES	
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<i>Neki Ram v. State of Haryana</i> , (1974) 76 Punj. LR 780	13
<i>Nemichand v. Khemraj</i> , AIR 1973 Raj 240	9
<i>Nga Po Ngwe v. Emperor</i> , AIR 1929 Rang 278	15

<i>Queen Emperess v. Hos Nak</i> , 1941 ALJR 416.	4
<i>R v. George Walton & Joseph Ogden</i> , (1863) 169 All ER 1399	12
<i>Rahim Baksh v. Bacha Lall</i> , AIR 1929 All 214	10
<i>Rameshwar v. State of Rajasthan</i> , AIR 1952 SC 54.	5
<i>Rishideo Pande v. State of Uttar Pradesh</i> , AIR 1955 SC 331.	4
<i>Rizan v. State of Chhattisgarh</i> , (2003) 2 SCC 661.	7
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<i>Yusufalli Esmail Nagree v. State of Maharashtra</i> , AIR 1968 SC147.	14

BOOKS

1. ADRIANE KEANE, JAMES GRIFFITH AND PAUL MCKEOWN, The Modern Law of Evidence, 8th Ed., 2010, Oxford University Press.
2. B.B. MITRA, Code of Criminal Procedure, 1973, 20th Ed., 2006,
3. B.R.SHARMA, Forensic Science in Criminal Investigation & Trials, 4th Ed., 2005, Universal Law Publishing Co.
4. BATUK LAL, The Law of Evidence, 18th Ed. 2010, Allahabad Law Agency.
5. COLLIN TAPPER, Cross & Tapper on Evidence, 11th Ed., 2005, Oxford University Press.
6. DR. SARALA GUPTA AND BENI PRASAD AGRAWAL, Forensic Science in Criminal Investigation & Trial, 1st Ed., 2013, Premier Publishing Co.
7. DR.ASIS MALLICK, Law of Evidence, 1st Ed., 2011, Eastern Law House.
8. M.MONIR, Law of Evidence, Vol.I,II, 15th Ed., 2010, Universal Publishing Co.
9. P.M. BAKSHI, Basu's Law of Evidence, 7th Ed., 2003, India Law House.
10. PETER MURPHY, Murphy on Evidence, 11th Ed., 2009, Oxford University Press.
11. PHIPSON ON EVIDENCE, 16th Ed., 2005,(Indian Rep.2007), Sweet & Maxwell.
12. Princep's Commentary on the Code of Criminal Procedure, 1973, 18th Ed., 2005, Lexis Nexis.
13. R.P. KATHURIA, Supreme Court on Criminal Law, 1950-2002, 6th Ed., 2002, Lexis Nexis Butterworth's Wadhwa.
14. R.V.KELKAR, Criminal Procedure, 5th Ed. 2011, Eastern Book Co.
15. RATANLAL & DHIRAJLAL, Criminal Procedure Code,1973, 2010, Lexis Nexis.
16. RATANLAL & DHIRAJLAL, Indian Penal Code, 33rd Ed. 2010, Lexis Nexis.

17. S.K. SARVARIA, R.A.Nelson's Indian Penal Code, Vol.I,IV, 10th Ed., 2008, Lexis Nexis Butterworths Wadhwa.
18. SHAMSUL HUDA, Principles of Law of Crimes, 3rd Ed., 1993, Easter Book Co.
19. STEPHEN MASON, Electronic Evidence: Disclosure, Discovery and Admissibility, 1st Ed., 2007, LexisNexis Butterworth Wadhwa.
20. SUDIPTO SARKAR AND VR MANHOHAR, LAW OF EVIDENCE, 17th Ed., 2010, Lexis Nexis Butterworth Wadhwa.
21. THOMAS A. MAUET AND WARREN D. WOLFSON, Trial Evidence, 4th Ed., 2009, Aspen Publishers- Wolters Kluwer.
22. VEPA P.SARATHI, Law of Evidence, 6th Ed., 2006, (Rep.2010), Eastern Book Company.
23. VINAYAK KAKDE, Criminal Trials, 2nd Ed., 2011, Universal Law Publishing Co.

LEXICON

1. BRYAN A.GARNER, Black's Law Dictionary, 9th Ed., 2010, West Publications, Thomson, Reuters.
2. DANIEL GREENBERG, Stroud's Judicial Dictionary, 7th Ed., 2008, Sweet & Maxwell.
3. J.E. PENNER, Mozley & Whitley's Law Dictionary, 12th Ed., 1984, (Rep.2010), Oxford University Press.
4. P.RAMANATHA AIYAR, The Major Law Lexicon, 4th Ed., 2010, Lexis Nexis.

ONLINE RESOURCES

1. AIR Online.
2. WestLaw India.
3. Manupatra.

4. SCC Online.
5. AdvocateKhoj.

STATUTES

1. The Code of Criminal Procedure, 1973.
2. The Indian Evidence Act, 1872.
3. The Indian Penal Code, 1860.
4. Prison (Bombay Prison and Furlough) Rules, 1959.
5. Model Prison Manual for Prisons in India, 2003.

STATEMENT OF JURISDICTION

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

STATEMENT OF FACTS

On 3rd February, 2014, Panna Boy was again granted parole citing the same reason to take care of his ailing wife. There were following chain of events that transpired the controversy;

a) Panna Boy visited Star Hospital where his ailing wife was undergoing treatment for some serious illness.

b) Mr. Jaimil was also admitted in the same hospital as he was asked to take complete bed rest for 2 weeks. At the same time cameras and other equipment were also installed for shooting supposedly some new project.

c) After one hour he was found in another room which was being ready for the shoot, Hero Panna was sitting next to an old lady, Mrs. Mashaal, in the role of mother. On the other side of the bed, Ms. Poonam, who is a look alike of Ms. Naika and usually acts for stunts and intimate scenes as her body double.

d) In the evening Hero Panna was found in the central mall along with his daughter in a colorful outfit. Later it was found that there were some hidden cameras and other equipment being ready for shoot and Ms. Poonam entered the Mall with some other people.

e) On 14th February, 2014, the posters of the film “The Hit Factory- An explosive love story” with tags of being released shortly were released in the newspapers and magazines.

On account of following events, on 16th February, 2014, Ms. Poonam filed a suit of permanent injunction of the movie, in the High Court Of Bambi citing that she had disassociated herself with the movie and even had returned the advance payment regarding the same. By allowing screening of the movie the directors are trying to tarnish her reputation. Secondly in the evening she received two phone calls within 15 minutes of gap between the two from unknown numbers that threatened her to take the case back.

STATEMENT OF CHARGES

- Panna Boy has been charged with Section 120 B read with Sections 34, 227, 501 & 502 of Indian Penal Code, 1860 for the crime of criminal conspiracy along with Saba and Jaimil, violation of any condition during remission of punishment and defamation, respectively.
- Saba and Jaimil has been charged with Section 120 B read with Sections 34, 385, 501 & 502 of Indian Penal Code, 1860 for the crime of criminal conspiracy along with Panna Boy, putting person in fear of injury to commit extortion and defamation, respectively.

SUMMARY OF ARGUMENTS

Issue-1 Respondents are guilty for the offence of Criminal Conspiracy with common intention to defame Ms.Naika

It is most humbly submitted that the respondents are guilty for the crime of criminal conspiracy with common intention to defame Ms.Naika as there has been agreement to do such illegal act and also there has been establishment of mens rea by conduct to prove the respondents guilty beyond reasonable doubt.

Issue-2 Respondents are guilty for defamation of Ms.Naika

It is most humbly submitted that the respondents have made imputation in order to harm the reputation of Ms.Naika by portraying her along with Mr.Panna Boy so as to tarnish her impeccable image.

Issue-3 Saba and Jaimil are guilty for putting Ms.Naika under fear of injury to extort

It is most humbly submitted that Saba and Jaimil are guilty of putting fear of injury to Ms. Naika to act with her despite of her refusal to do the same.

Issue-4 Panna Boy is guilty to violate condition of remission of punishment

It is most humbly submitted that Panna Boy is guilty to violate the condition of remission of punishment as he has acted in the movie along with the dupe of Ms. Naika, in order to defame her.

ARGUMENTS ADVANCED**ISSUE-1 RESPONDENTS ARE GUILTY FOR THE OFFENCE OF CRIMINAL CONSPIRACY WITH COMMON INTENTION TO DEFAME MS.NAIKA.**

It is most humbly submitted that the respondents are guilty for committing the crime of criminal conspiracy with a common intention to defame the complainant, Ms. Naika (herein after as "PW4"). It is pertinent to note that the punishment for committing criminal conspiracy is mentioned in Section 120 B, Indian Penal Code (herein after referred to as "IPC") whereas in order to show conviction under this charge, it is important to refer to the ingredients of Sec. 120A, IPC. Thus this will be shown by looking at the *actus reus [1.1]* and *common intention to conspire [1.2]* by the respondents.¹

[1.1] Acts of the respondents were to conspire against the complainant

Under Sec. 120A, IPC, *Criminal conspiracy* is defined as when two or more persons agree to do or cause to do;

- a) **There must be an agreement between the persons who are alleged to conspire [1.1.1];**
and
- b) That agreement should be for doing; *an illegal act, or an act which is not illegal by illegal means [1.1.2]*, then such an agreement is designated to be criminal conspiracy.²

The accused dealing with the criminal conspiracy, show that there were transactions which infer the conduct of respondents for the same.³

¹ Chandiram v. Emperor, AIR 1926 Sind 174.

² Section 120A, IPC.

[1.1.1] There was an agreement between the respondents to conspire

The very essential ingredient of proving criminal conspiracy is to show agreement between two or more persons who were alleged to conspire, itself amounts to offence.⁴ In order to convict the respondents guilty circumstantial evidence must be relied upon.⁵

Saba (hereinafter referred as “A2”) and Jaimil (hereinafter referred as “A3”) approached Ms.Naika (hereinafter as “PW4”) for completion of the movie by shooting some last incomplete scenes to which she refused to do so and showed them the way out of her house.⁶ By looking at other facts in issue we find that A3 being admitted to the very same hospital on 6th February, 2014⁷, where A1’s ailing wife was admitted cannot be simply construed as a coincidence and it indicates the intention of the accused to plot the conspiracy to shoot incomplete scenes using look alike of PW4 as Poonam.

[1.1.2] The agreement was for doing an illegal act.

An act is said to be *illegal* which amounts to an offence, prohibited by law.⁸ The mere agreement by two or more persons to do or causing any illegal act to be done constitutes an *overt act (actus reus)*. *Actus Reus* in a conspiracy is the agreement to execute the illegal conduct, not the

³ *Madanlal vs State Of Punjab*, 1967 SCR (3) 439.

⁴ *K.S. Narayan v. S. Gopinathan*, 1982 CrLJ 1611 (Mad.)

⁵ *State (NCT of Delhi) v. Navjot Sandhu*, 2005 Cr LJ 3950 SC.

⁶ Para 7, p. 2, Moot Proposition.

⁷ Para 13, p.3, Moot Proposition.

⁸ Sec.43, IPC.

execution of it. It is not however necessary that each conspirator should have been in communication with every other.⁹

There lies no spec of doubt arising out of the fact that A1 did knew about the plot of shooting few scenes at hospital and this cannot be called to be a matter of sheer coincidence. *Arguendo*, even if A2 and A3 were not at communication with A1, there is no need to have a prior communication to hatch a plot as a conspiracy and can be done at the spur of moment in order to attain a common object.¹⁰ Hence, it is humbly submitted that there was an agreement between A1, A2 and A3 to shoot the incomplete scenes by way of using a body double and then superimposing the same as that of the victim.

[1.2] Respondents had Common Intention to conspire the plot for defamation.

Common intention of the respondents is a vital part in order to show that they were intending to act in furtherance to commit a crime.¹¹ Conspiracy is usually hatched up in utmost secrecy so it is impossible to be proved by way of direct evidence hence circumstantial evidence has to be relied upon. This has to be shown by way of looking at statements, conduct and acts of the respondents to show them to have common intention to conspire.¹² It is a well settled principle that the evidence as to transmission of thought sharing the unlawful design may be sufficient to prove the accused guilty¹³.

⁹ *Vimal Chand v. State of Rajasthan*, 1999 Cr LJ 128 (Raj.).

¹⁰ *Mahbub Shah v. Emperor*, (1945) 47 Bom LR 941.

¹¹ Sec.34, IPC.

¹² *Mohd.Usman Mohd.Hussain v. State of Maharashtra*, AIR 1981 SC 1062.

¹³ *Kehar Singh v. State (Delhi Admin.)*, (1989) Cr LJ 1.

[1.2.1] Respondents actively participated to conspire against the complainant

Circumstantial evidence can be instrumental to convict an accused if it shows that a chain of evidence has been so completed that it does not leave room for any reasonable doubt for a conclusion to prove him guilty.¹⁴ Thus the facts in issue are those which shows that the respondents were involved in transaction to conspire against complainant.

[1.2.2] Presence at scene of occurrence amounts to presumption of participation

The presence of A1 at the scene of occurrence amounts to the presumption of participation and it is established by the presumption that '*juris et de jure*' which means 'actual presence' in furtherance to do a pre-planned act amounts to 'participation' in the same.¹⁵ A1 was present at the scene of shoot along with Ms. Poonam, which has been corroborated by oral evidence by Mr. Ganesh, who happened to be cameraman asked to take few shoots of A1 with DW4.

[1.2.3] Arguendo, Common intention may develop on the spot

Common intention as per Sec.34, IPC presupposes that there must be a prior concert, a pre-arranged plan, ie, a prior meeting of minds, does not mean that there must be a long interval of time between the formation of common intention and doing the act.¹⁶ Such common intention may take place at the time of commission of criminal act and it does not mean that the accused

¹⁴ *Queen Emperess v. Hos Nak*, 1941 ALJR 416.

¹⁵ *Barendra Kumar Ghose v. Emperor*, AIR 1925 PC 1.

¹⁶ *Rishideo Pande v. State of Uttar Pradesh*, AIR 1955 SC 331.

need to have knowledge about the consequences but should know the act to be punishable under IPC.¹⁷

[1.3] Admission of evidence by witness

As per Sec.118, Indian Evidence Act (herein after as "IEA"), all persons shall be competent witnesses, unless they are prevented from understanding or answering the question put to them by virtue of tender years, extreme old age, disease or infirmity, lunacy or any other cause of same kind.¹⁸ The witness's statements by, Ms. Khushboo (herein after referred as "PW3") and Mr. Ganesh (herein after referred as "PW4") show that A1 has played along with A2 and A3 as being a co- conspirator by acting in the scenes which were refused to be shot by complainant.

The statements given by PW3 as an oral evidence which is admissible as per Sec. 118, IEA as he being the person occupying a position in issue or relevant for the proceeding. Whereas statements made by PW5 even though being an evidence needs corroboration which has been done by video recording of the scenes.

[1.3.1] Admissibility of Circumstantial evidence

Corroboration is not required to be done by way of direct evidence only but even mere circumstantial evidence can be need to show the same.¹⁹ The following statements by witnesses who were accomplice are to be held as circumstantial evidence;

[A] Panna Boy visited Star Hospital and Central Mall

Confession: A1 visited Star Hospital and Central Mall on respective dates.

¹⁷ *Nazir v. Emperor*, AIR 1948 All 229.

¹⁸ Sec.118, IEA.

¹⁹ *Rameshwar v. State of Rajasthan*, AIR 1952 SC 54.

Witness Statement: Ms. Khushboo (herein after PW3) indicate that A1 was seen at gate, wearing a white kurta and who waved her back. After knowing about the shoot at Cenral Mall, PW3 rushed there, where A1 was seen in colorful retro outfit.²⁰

[B] Star Hospital and Central Mall was readied for shoot

Confession- A1 confessed that upon visiting Star Hospital and Central Mall he visited rooms which were readied for shoot.²¹

Witness Statement: PW3 found that A1 was at Central Mall which was being readied for shoot by use of bright lights and he was wearing colorful outfit.²²

[C] Poonam and Ms.Mashaal had some scenes shot with Panna Boy

Confession: A1 was photographed with Ms.Mashaal (herein after as DW5) and Ms. Poonam(herein after as DW4) at *Star Hospital* and *Central Mall*.

Witness Statement: Mr.Ganesh (herein after as PW5) indicated that he took few shots of A1 with DW5 in a VIP room at Star Hospital. He also indicated that A1 also had some scenes shot at Central Mall with DW4. PW5 also shot an intimate scene of DW4 and A1 where Jaimil A3 directed him to focus on views and angles that gave striking resemblance of that of complainant.²³

²⁰ Annexure 1, Para 2, p.5, Moot Proposition.

²¹ Annexure 1, p.6, Moot Proposition.

²² *Ibid.*

²³ *Supra note 20.*

Evidence adduced by way of statements by DW4 and DW5 cannot be disregarded in *toto*, even though they being interested witness.²⁴ Upon such circumstances, it has been established that the respondents conspired to plot against PW4.

[1.3.2] Minor discrepancies in witness statements are immaterial

The minor discrepancies in the evidence cannot be used to totally discredit the evidence deposed by witnesses against the accused. Such discrepancies in evidence are likely to happen due to normal errors of observations, normal errors of memory due to lapse of time and due to mental dispositions.²⁵ Due care and caution must be taken while looking at the admission of such statements.²⁶ Secondly, as contended by the respondents it is not necessary to have examination of investigating order and it is neither fatal nor prejudicial to respondents in the present case.²⁷

ISSUE-2 RESPONDENTS ARE GUILTY FOR DEFAMATION BY PUBLISHING POSTERS OF MS.NAIKA ALONG WITH MR. PANNA BOY

It is most humbly submitted that the accused are liable for defamation of Ms. Naika by the act of shooting some intimate scenes and releasing the advertisement by way of film posters of “Hit Factory”, by using a look alike. The issue of defamation will be dealt in present section by looking into the ingredients and establishing the *mens rea* and *actus reus* to commit the same whereas the issues of criminal conspiracy and threat will be dealt subsequently.

²⁴ *Krishna Pillai v. State of Kerala*, AIR 1981 SC 1237.

²⁵ *Rizan v. State of Chhattisgarh*, (2003) 2 SCC 661.

²⁶ *Anand Mohan v. State of Bihar*, (2012) 7 SCC 225.

²⁷ *State of Orissa v. Sibcharan Singh*, AIR 1962 Ori. 157.

[2.1] Respondents are liable for defamation by publishing posters and advertisements.

The manner in which an act by the respondents is held to be defamatory is based on essentials of defamation under Section 501 as;

- There shall be *printing or engraving* of any matter[2.1.1].
- *Knowledge or reason to believe* that such matter is defamatory[2.1.2].²⁸

Hence, it is necessary to look into the facts in issue with reference to the ingredients of Section 501, IPC to pull the respondents to be defaming the complainant.

[2.1.1] Printing or engraving of any matter.

Print refers to the impression made in a material by a die, mold, stamp, or the like, a distinctive stamped or printed mark or design.²⁹ The defamatory matter must be published i.e., communicated to some other person other than the person about whom it is made.³⁰ There had been various posters of varied dimensions which have been used as advertisements with clear mention about A1 starring alongside PW4.³¹

[2.1.2] Knowledge or reason to believe that such matter is defamatory.

In order to show that a printer or engraver of a defamatory matter may be liable, it is essential that he should have the **mens rea** defined in this section, *knowledge or reason to believe* that the

²⁸ Sec. 501, IPC.

²⁹ BRYAN A. GARNER, Black's Law Dictionary, p.1313, 9th Ed.,2009, Thomsons Reuters Publication.

³⁰ *Violet Waspare v Maureen Frond*, 1970 Mad LW (Cr) 4 Mad.

³¹ Annexure5, p.14, Moot Proposition.

matter printed or engraved is defamatory of some person.³² Whether a person had knowledge or good reason to believe, is to be inferred from proved facts and circumstances.³³

By virtue of use of Ms. Naika's superimposed picture for posters of the film, there has been tacit acceptance on the part of the respondents to portray her with A1.³⁴ The very act of the respondents *printing* posters have impugned the reputation of the victim as such matter is untrue and hence is per se defamatory.³⁵

[2.2] Respondents sold the advertisements/posters of alleged movie to newspapers/magazines.

Sale of printed or engraved substance containing defamatory matter knowing that it contains such matters is punishable.³⁶ In the present case, there was a prior knowledge on the part of the accused as alleged by the complainant, of the defamatory imputations contained in the movie posters, which they could have been prevented from publication. Thus the applicants cannot, therefore, escape their liability unless they show their act to be under Exception 1 or Exception 9 of Sec.499, IPC such as to be done under good faith or public interest.³⁷ The act of advertising has harmed reputation of the complainant, who did not even consented to act along with A1 as he being involved in anti social activities.

³² *Nemichand v. Khemraj*, AIR 1973 Raj 240; *Sankaran Chettiar v. K. Ramakrishna Pillai*, AIR 1960 Ker.141.

³³ *K.M. Amma v. S.M. Shereif*, 1985 Cri.LJ 1496.

³⁴ Annexure 1, Para 6, p.6, Moot Proposition.

³⁵ *S.Khushboo v. Kanniamal*, AIR 2010 SC 3196.

³⁶ Sec.502, IPC.

³⁷ *Ashok Ku.Jain v. State of Maharashtra*, 1986 Cr LJ 1989 (Bom.).

[2.2.1] The imputation were made to harm the reputation of PW4

The **reputation** of PW4 has been harmed by way of making imputation against her.³⁸ Reputation is a *jus in rem*, a right against absolute and against all the world. A man's reputation is his property.³⁹ The **harm** has to be reputation itself of the person so defamed.⁴⁰ A1 had been convicted under the Arms Act, 1959 for possession of AK 56,⁴¹ which shows that he was involved in anti-social activities, thus by portraying PW4 along with A1, there has been *actus reus* of the respondents to cause imputation against her impeccable image.⁴² A2 and A3 were having the knowledge that the advertisement posters contained the name of PW4 along with A1, which would cause imputation to her reputation. Secondly, PW4 belonged to reputed family who were in Army and also promoted the motto of CTITF, being its representative. Thus they cannot flee away by citing the reason of ignorance as an excuse as PW4 made it known expressly in the public that she did not wanted to act with such anti- social elements.⁴³

Arguendo, however even if the imputation is not per se defamatory, that by itself would not go to the advantage of the publisher, for the complaining person can establish on evidence that the publication has in fact amounted to defamation even in spite of apparent deficiency.⁴⁴

³⁸ *Veeda Menzes v. Yusuf Khan*, (1966) 68 Bom LR 629 (SC).

³⁹ *Rahim Baksh v. Bacha Lall*, AIR 1929 All 214.

⁴⁰ *Amar Singh v. KS Badalia*, (1965) 2 Cr.LJ 693 (SC).

⁴¹ Para 1, p.1, Moot Proposition.

⁴² Para 6, p.2, Moot Proposition.

⁴³ *Ibid*.

⁴⁴ *John Thomas v. K. Jagdeesan*, AIR 2001 SC 2651.

[2.3] Admissibility of digital photography of the alleged scenes

A witness who knows how the scene looked at the relevant time testifies that the digital photograph fairly and accurately portrays the scene as it appeared at that time.⁴⁵ No person shall be allowed to violate public morality under the guise of cinematic liberty.⁴⁶

Arguendo even if it has been stated by the accused A1 and A2 that the images were made by superimposition of that of complainant, still there was intention on the part of respondents to malign the her image. Hence it is humbly submitted that the respondents were actively participating in the plot of defamation by shooting scenes of A1 along with PW4 and releasing posters of them as advertisements in newspapers and magazines.

**ISSUE-3 SABA AND JAIMIL ARE LIABLE FOR THE GUILT OF PUTTING FEAR OF INJURY TO
EXTORT MS. NAIKA.**

It is humbly submitted that Saba(A2) and Jaimil(A3) are guilty for offence of putting fear of injury in order to extort under Sec.385,IPC. For the charges to be proved as per Sec.385 there must be following ingredients which must be shown such that,

- the accused put or attempted to put any person in fear of any injury[3.1.1]; and that
- such act of the accused was in order to commit extortion[3.1.2].

The offence under this section is an aggravated form of offence defined under Sec.383 and must be read in conjunction with it.⁴⁷ **Extortion** has been defined as intentionally putting a person in fear of injury to himself or another by way of dishonestly inducing such person.⁴⁸

⁴⁵ THOMAS A. MAUET, WARREN D. WOLFSON, Trial Evidence, p. 347, 4th Ed., 2009, Aspen Publishers.

⁴⁶ A. Arulmozhi v. Government of India and Ors., (2005) 3 MLJ 497.

[3.1.1] To put or attempt to put any person in fear of any injury

The fear of injury must be in such a way that it unsettle the mind of the person upon whom it is exercised is not voluntary.⁴⁹ The injury need to be physical injury and may be to malign one's character.⁵⁰ The statement of PW4 shows that her personal mobile number was known to few and A2 and A3 were amongst them.⁵¹ Following statements show that there was threat which was induced in the mind of PW4 to extort her;

- Call at 6:05 pm, Male voice1: "*Better cooperate to face the consequences. Keep in mind you've big family....*"
- Call at 6:15pm, Male Voice2: "*Finish the movie dear. Just two days... very discreet.. Else... Results will be tragic...*"⁵²

These two statements were recorded as a matter of audio recording by the mobile company and were provided as transcript as there is likelihood that voice recording may be hit by many infirmities.

[3.1.2] Act of the accused were in order to commit extortion

The charge of extortion is established when the accused put the complainant or to any other person in fear of an injury and then *dishonestly induced* her to deliver any valuable security.⁵³

⁴⁷ *Tanumal Udhasingh v. Emperor*, AIR 1944 Sind 203.

⁴⁸ Sec.383,IPC.

⁴⁹ *R v. George Walton & Joseph Ogden*, (1863) 169 All ER 1399.

⁵⁰ K.D. GAUR, Textbook on The Indian Penal Code, 4th Ed.,2012, Universal Law Publishing Co.

⁵¹ Annexure 1, Para 3, p.6, Moot Proposition.

⁵² Annexure 4, p.13, Moot Proposition.

Sec.30, IPC defines *valuable security* as a document conferring or extinguishing a legal right, or acknowledging a liability.⁵⁴ By the statement made by PW4 it is evident that there was extortion by dishonest inducement to take the case back⁵⁵ and was also forced to co-operate in order to finish movie.⁵⁶

[3.2] Admissibility of transcripts of call records (corroborated with voice recording) as evidence

Transcription is the conversion of recorded utterances into a written record.⁵⁷ Such transcription is secondary evidence which is corroborated with the voice recording.⁵⁸ Transcript of call records show the relevant facts in issue that forms part of transaction⁵⁹ such that the calls were made by A2 and A3 or were rather abetted by way of principal accomplice in order to extort PW4.

Hon'ble Supreme Court has held that the conversation or dialogue recorded on a tape recording machine along with its transcript as admissible evidence.⁶⁰ Thus it is a relevant evidence in order

⁵³ Sec.383, IPC.

⁵⁴ *Neki Ram v. State of Haryana*, (1974) 76 Punj. LR 780.

⁵⁵ Annexure 1, Para 3, p.6, Moot Proposition.

⁵⁶ Annexure 4, p.13, Moot Proposition.

⁵⁷ B.R.SHARMA, *Forensic Science in Criminal Investigation & Trials*, p.255, 4th Ed., 2005, Universal Law Pub.Co.

⁵⁸ *State (NCT of Delhi) v. Navjot Sandhu, SAR Gilani & Ors.*, AIR 2005 SC 3820

⁵⁹ *Brijmohan Ramdas Mehra v. Ziyauddin Burhanuddin Bukhari* [1972] *Election Petition No. 4 of 1972*.

⁶⁰ *Sanjay Dutt v. State of Maharashtra, Through CBI (STF), Bombay*, AIR 2013 SC 3687.

to understand the nature of statements made so as to show motive of the respondent.⁶¹ Tape record is a document for purposes of Section 159 and 160 of IEA.⁶²

The conversation between Ms. Naika and caller 1 and 2 from public booths situated 1.5kilometers away show that there is no iota of doubt that there were two distinct voices who called her.⁶³ As her personal number was with only few and A2 and A3 being amongst them it forms link in the chain of facts to show that there was a conspiracy with common intention to threat PW4.

ISSUE-4 PANNA BOY IS GUILTY TO VIOLATE THE CONDITIONS OF REMISSION

It is most humbly submitted that A1 has been granted parole by way of using his political connections and have misused the conditional remission thus being guilty under Sec.227,IPC. In order to show an accused to be guilty under Sec.227, following essentials must be fulfilled;

- Accused accepted conditional remission of punishment[4.1];
- Accused knowingly violated any condition for which such remission was granted[4.2].

[4.1] Panna Boy accepted conditional remission of punishment.

Remission is reduction of the amount of a sentence without changing its character.⁶⁴ The remission cannot be claimed by a prisoner as of right and it is for the State government to grant

⁶¹ *Yusufalli Esmail Nagree v. State of Maharashtra*, AIR 1968 SC147.

⁶² *Supra Note 59*.

⁶³ Annexure 4, p.13, Moot Proposition.

⁶⁴ *State (Govt.of NCT of Delhi) v. Prem Raj*, (2003) 7 SCC 121.

remission after examining the conduct of prisoner in the jail.⁶⁵ On 3rd February, 2014, Panna Boy was granted parole on citing his wife's illness to be the reason, within two months from the previous parole.⁶⁶ This has been done as a violation of Rule 19 of Prison (Bombay Parole and Furlough) Rules, 1959, as there shall be gap of one year between two grant of parole.⁶⁷

[4.2] Panna Boy has knowingly violated the condition for which he was granted parole

The accused has accepted the conditional remission of punishment⁶⁸ as a matter of not indulging himself in any sort of criminal offence.⁶⁹ A1 had been granted parole for the reason to meet his ailing wife, but he had acted in the movies with an intention to conspire against PW4, in order to defame her. This fact has been established by witness statements of the prosecution and corroborated with the CCTV footage of Star Hospital and Central Mall. A1 did the act of shooting knowingly along with DW4, which proves that he actively participated in conspiracy to defame PW4. Hence it is humbly submitted that A1 has violated the conditional remission and is guilty to be charged.⁷⁰

⁶⁵ *Sitabai v. State of MP*, 1990 Cr.LJ 174.

⁶⁶ Para 10, p.2, Moot Proposition.

⁶⁷ Rule 19, Prison (Bombay Parole & Furlough) Rules, 1959 (herein after referred as "Prison rules").

⁶⁸ Chapter 16, Model Prison Manual, New Delhi, 2003.

⁶⁹ Rule 10, Prison Rules.

⁷⁰ *Nga Po Ngwe v. Emperor*, AIR 1929 Rang 278.

PRAYER

Wherefore, in light of the issues raised, arguments advanced and authorities cited, may this

Hon'ble Court be pleased to:

- a) **Convict** Panna Boy, Saba and Jaimil for offence of criminal conspiracy coupled with common intention and defamation *vis-à-vis* Sections 120B, 34, 501 and 502, respectively.
- b) **Convict** Panna Boy for offence of violation of condition of remission under Section 227 of IPC,1860.
- c) **Convict** Saba and Jaimil for offence of putting fear in Ms. Naika in order to extort her under Section 385 of IPC, 1860.

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

Sd/-

Public Prosecutor