**MOOT MEMORIAL**

**Project submitted for the partial fulfillment for the degree of BA.LL.B**



Submitted to: Submitted by:

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**ACKNOWLEDGMENT**

Concentration, dedication and application are necessary, but they are not the only enough tools to achieve any goal. They need to be awarded by guidance, assistance and kind cooperation of some people to make it possible.

Nothing concrete can be achieved without an optimal combination of inspiration and perspiration. No work can be accomplished without taking guidance from the right people. It is only the critiques of the ingenious intellectual that helps transform a product into a quality product.

it gives me a great pleasure to express my deep-felt gratitude to Mr. **ANAS ALI**  for his expert guidance and co-operation from his busy schedule and extending all the required help time and again and providing me with valuable inputs from time to time.This work is a synergistic product of many minds. So, I would like to thank all the people who are directly or indirectly related to the moot memorial without of this project would not have been possible.

BEFORE THE HON’BLE SUPREME COURT OF INDIA

Original Writ Jurisdiction PUBLIC INTEREST LITIGATION

W.P. (CIVIL) NO. \_\_\_\_\_\_\_\_\_ OF 2014

UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA

SWADESHI SURAKSHA SAMITI ......................................................PETITIONER

v.

UNION OF INDIA AND ANR. ......................................................... RESPONDENTS

UPON SUBMISSION TO THE HON’BLE CHIEF JUSTICE AND HIS COMPANION JUSTICES OF THE SUPREME COURT OF INDIA

MEMORANDUM ON BEHALF OF THE PETITIONER

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**LIST OF ABBREVIATION**

& : And

Anr. : Another

AIR : All India Reporters

GoI : Government of India

DoAE : Department of Atomic Energy

Cr.P.C : Criminal Penal Code

C.P.C : Code of Civil Procedure

Del. : Delhi

SSS : Swadeshi Suraksha Samiti

I.P.C : Indian Penal Code

Ors. : Others

SC : Supreme Court

SCR : Supreme Court Reporter

U/S : Under Section

RUL : RUSTAM URANIUM CORPORATION PRIVATE LIMITED

UCIL : URANIUM CORPORATION OF INDIA LIMITED

**INDEX OF AUTHORITIES**

**Statutory Authority:**

* The Constitution of India, 1950
* The Environment (Protection) Act, 1986
* The Forest (Conservation) Act, 1980
* The Wildlife Protection Act, 1972
* The Code of Civil Procedure, 1908
* The Code of Criminal Procedure, 1973

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* . P. Leelakrishnan, Environmental Law in India, Lexis Nexis
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* Ratanlal & Dhirajlal, Commentary on The Code of Criminal Procedure.
* The Code of Criminal Procedure by Prof. S.N. Mishra.
* Sarkar, Commentary on CPC.
* CPC and Limitation by C.K.Takwani

**Cases Referred:**

* Farook shaik vs the state of Gujarat
* Oberoi construction private vs state of maharashtra
* Mrs jeevaratamammal vs the collector

**Websites Referred:**

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**STATEMENT OF JURISDICTION**

THE PETITIONER HUMBLY SUBMITS TO THE JURISDICTION OF THIS HONORABLE COURT UNDER ART 32 OF THE CONSTITUTION. THE PETITIONER HAS APPROACHED THIS HONORABLE COURT IN APPREHENSION OF THE VIOLATION OF RIGHTS THAT INEVITABLY OCCUR SHOULD THE IMPLEMENTATION THE POLICY OF THE GOVERNMENT NOT BESOTTED. THEREFORE, THE PETITIONER MAINTAINS THAT THE JURISDICTION OF ART 32 OF THE CONSTITUTION, WHICH PROTECTS THE CITIZENS OF.INDIA FROM ANY VIOLATION OF THEIR FUNDAMENTAL RIGHTS, IS APPLICABLE IN THE PRESENT CASE.

**STATEMENT OF FACTS**

1. The Territory of INDIA, a developing country, with about 40% of the population involved in and carrying out agricultural Activities. India is rich in atomic resources, especially Uranium which is found in the mineralized zone of ‘HITHRO’, declared as a ‘Scheduled Area’ under Panchayat Act, 1996, which covers an area of 25 sq. km. in the ‘Reserve Forest’ of SWADESHI, an area of 125 sq. km where tribal communities ‘LETRIA’, ‘LORTEP’ and ‘LANOITAN’, of about 400 to 450 in number live in the State of REALKHAND.

2. The aforementioned tribal communities derived their means of livelihood from the forest lands of “SWADESHI” by carrying out activities such as apiculture, gathering of herbs, flowers and fruits and collection of gum dust and other produce. Although SWADESHI was rich in atomic resources, the commercial exploitation of the same was not permitted, as India took pride in the natural biodiversity comprising of rare flora and fauna, including the bar-headed goose and tufted duck that it possessed, in the forests of SWADESHI.

3. India incurred an electricity-crisis as on 12th January 2012 that led to reduced supply of electricity to major areas of the Industry. As a result, several industries had to be shut down, temporarily, and several workers were either laid off in accordance with law. On 26thMay 2012, The ‘ALL INDIA LABOUR FORUM’ approached the SC , and sought to quash the Permission accorded to the Industries to lay off the employees, and also to direct the GoI to provide for a remedy to the power crisis. The Court passed an order that directed the GoI to initiate action to resolve the electricity crisis.

4. The GoI, on 20th August 2012, in light of the Report submitted by the DoAE on 11th July 2012, leased an area of 45 sq. km, inclusive of the Scheduled Area, form the lands of SWADESHI, for a period of fifty years, to UCIL , a fully owned entity of the DoAE, India. In the months of August-September 2012. Further, SSS, an NGO, protested that Uranium mill tailings retain about 85% of the original radioactivity of the ore, and it is very difficult to minimize releases of radioactive decay products. They also alleged that the said mining activity would hinder their livelihood and peaceful existence in the forests of SWADESHI.

5. On 16th December 2012, UCIL gave a Tender Notification, to sub-lease the process of extraction of minerals from the ores of SWADESHI, RUC , by reason of being the highest bidder, was granted the lease on January 30th 2013. As per the agreement between the UCIL and RUC, the Extracted Minerals are to be owned by the UCIL, and the land is leased to RUC for a period of 30 Years. It commencing from the date of grant of ‘Environmental Clearance’, by the ‘Ministry of Environment and Forests, GoI, for the process of extraction. Further, the agreement provided that the complete output of RUC shall be provided to the UCIL, and payment for extraction of the same shall be made, by UCIL, at the rate prescribed by the ‘Evaluation Committee’ to be constituted by the DoAE.

6. The RUC applied for an Environmental Clearance , after due compliance with the necessary Rules and Regulations in this regard, on 13th July 2013. The Gram Panchayats, living in and around the vicinity of the Forests of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance. The Gram Panchayats did not raise any objections against the Project.

7.The Notification that provided for a Public Hearing of the tribal community, residing in SWADESHI, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government and as such a Hearing need not be made:-

8. On 1st June 2014, A Conditional Environmental Clearance was granted for a period of 30 years.

9.SSS, espoused the cause of the tribal communities, alleged that the Environmental Clearance that was granted was not in consonance with the objects of the Environment (Protection) Act, 1986 and the Forest Conservation Act, 1980, and SSS, thereon filed a Writ Petition under Article 32 of the Constitution of India, on 14th July 2014.

**ISSUES RAISED**

The following issues are raised before the Hon’ble Court in the instant matter-

**1. WHETHER THE WRIT PETITION FILED UNDER ART. 32OF THE CONSTITUTION OF INDIA MAINTAINABLE**

1.1. The petition has been filed in public interest and therefore maintainable as public interest litigation

1.2. Alternative remedies not a bar

1.3. The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the rights alleged in the present matter

**2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW**

2.1. Arbitrary and capricious acts of the State are annulled by Art. 14

2.2. The Policy of mining in the forests of Swadeshi is arbitrary and capricious and hence violates of Art. 14 and Art. 21

**3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS**

3.1. Violation of Constitutional protection and safeguards

3.2. The forced assimilation of indigenous people violates constitutional provisions of India and international conventions & treaties

**4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID**

4.1. Environmental clearance invalid based on procedural violations

4.2. Violation of Mines and Minerals (Development and Regulation) Act, 1957 4.3.EnvironmentClearance when validated

**SUMMARY OF ARGUMENTS**

**1.WHETHER THE WRIT PETITION FILED UNDER ART. 32OF THE  CONSTITUTION OF INDIA MAINTAINABLE**

The petitioner most humbly submits that the petition filed under Art. 32 of the Constitution is maintainable as a Public Interest Litigation, which has been filed with the apprehension of violation of Fundamental Rights enshrined under Part III of the Constitution. The procedurals flaws which depict the improper implementation of the policy decision of the Government by the company which falls under the ambit of other authorities under Art. 12 of the Constitution. Thus, the petition is maintainable.

**2. WHETHER THE IMPLEMENTATION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW.**

The petitioner contends that the implementation of the policy decision of the Government if found to be arbitrary, thus violative of Art. 14 and Art. 21. Rule of law has also been violated by the improper implementation of the policy decision of the Government. This execution is not based on sound reason hence has delivered results that shows the colorable exercise of power.

**3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS**

It is humbly submitted before the Hon’ble Court that, Article 19and Article 21 of the Constitution have been violated on account of arbitrary action of state, thus, resulting in violation Article 14as well. Right to Reside, Right o Livelihood and Right to Shelter have been violated on the account of deforestation. It is further submitted that Right to Culture has also been violated since; the indigenous people will be subjected to forced assimilation and isolation.

**4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID**

It is humbly submitted that the RESPONDENT herein has not granted the environmental clearance in accordance with the Environment Impact Assessment Notification, thereby violating various provisions of the Forest Conservation Act, 1980, Environment Protection Act, 1986 and Environment Protection Rules, 1986. It is submitted that the environmental clearance when validated causes damage to the environment, resulting in a disturbance to the livelihood of the tribal community, causing health hazards to the tribes which in turn infringes various fundamental rights of the tribal community along with other provisions of the Constitution.

**ARGUMENTS ADVANCED**

**1.WHETHER THE WRIT PETITION U/S 32 OF THE CONSTITUTION MAINTAINABLE ?**

**The Appeal is maintainable.**

The counsel for the appellant would like to humbly submit before the hon’ble Supreme Court that appeal against the action of GoI is maintainable in the court of law. The above context is in the validation of the Writ that been filed by petitioner in the court when got aware of the proceedings. The word appeal under section 19 & 21 of The Constitution of India include Fundamental rights of every citizen to live in a clean & healthy environment & Section 4(5) of Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006. It may be ordinary appeal or a letters patent appeal special leave. The delay in filing the appeal is reasonable and the delay caused by ignorance of law or due to the reason that the petitioner didn’t get the notice of proceeding is not unnecessarily unreasonable

**2. Whether the implementation of policy decision of GoI violate Article 14 & 21 & Rule of Law?**

According to the policy decision of GoI it has violated Article14 & 21 by giving tender to the Uranium Corporation Limited and Rustom Uranium Corporation Ltd. Without proper Socio-impact assessment . Such mining of hazardeous things could lead to environment pollution making environment unclean and unhealthy for indigenous tribal communities living there which would violate Article21 of the Constitution.

The Indigenous Tribes are challenging the act of GoI & DoAE as they are violating the fundamental rights to life, autonomy and dignity guaranteed under Article 21, and their right to expression and freedom under Article 19 & are not having attention towards Precautionary Principle under The Environment Protection Act.

The government has declined as an authority to protect the rights of the Schedule tribes and their means of livelihood and quashed the cases put up by the pachayat of the area. It is not considerate enough towards the mining hazards for the humans as well as the flora and fauna.

That the DoAE must look into the Socio-Impact Assessment before allowing UCIL or RUL could do mining. In most of the cases mining had been apoor decision regarding environment protection and impact. Uranium is a highly radioactive matter which will destroy the whole ecosystem if not treated under high protection & highly precision

**3. Whether the rights of the tribal communities are infringed by mining projects?**

Yes through mining forests would be deforested which will lead to a danger to the indigenous communities living there. According to Scheduled Tribes And Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 recognizes the rights of the forest dwelling tribal communities and other traditional forest dwellers to forest resources, on which these communities were dependent for a variety of needs, including livelihood, habitation and other socio-cultural needs. The forest management policies, including the Acts, Rules and Forest Policies of Participatory Forest Management policies in both colonial and post-colonial India, did not, till the enactment of this Act, recognize the symbiotic relationship of the STs with the forests, reflected in their dependence on the forest as well as in their traditional wisdom regarding conservation of the forests.

The Act encompasses Rights of Self-cultivation and Habitation which are usually regarded as Individual rights; and Community Rights as Grazing, Fishing and access to Water bodies in forests, Habitat Rights for PVTGs, Traditional Seasonal Resource access of Nomadic and Pastoral community, access to biodiversity, community right to intellectual property and traditional knowledge, recognition of traditional customary rights and right to protect, regenerate or conserve or manage any community forest resource for sustainable use. It also provides rights to allocation of forest land for developmental purposes to fulfil basic infrastructural needs of the community. In conjunction with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Settlement Act, 2013 FRA protects the tribal population from eviction without rehabilitation and settlement.

The Act further enjoins upon the Gram Sabha and rights holders the responsibility of conservation and protection of bio-diversity, wildlife, forests, adjoining catchment areas, water sources and other ecologically sensitive areas as well as to stop any destructive practices affecting these resources or cultural and natural heritage of the tribals. The Gram Sabha is also a highly empowered body under the Act, enabling the tribal population to have a decisive say in the determination of local policies and schemes impacting them.

Thus, the Act empowers the forest dwellers to access and use the forest resources in the manner that they were traditionally accustomed, to protect, conserve and manage forests, protect forest dwellers from unlawful evictions and also provides for basic development facilities for the community of forest dwellers to access facilities of education, health, nutrition, infrastructure etc.

Section 4(5) of the Act is very specific and provides that no member of a forest dwelling Scheduled Tribe or other traditional forest dwellers shall be evicted or removed from the forest land under his occupation till the recognition and verification procedure is complete.

This clause is of an absolute nature and excludes all possibilities of eviction of forest dwelling Scheduled Tribes or other traditional forest dwellers without settlement of their forest rights as this Section opens with the words “Save as otherwise provided”.

The rationale behind this protective clause against eviction is to ensure that in no case a forest dweller should be evicted without recognition of his rights as the same entitles him to a due compensation in case of eventuality of displacement in cases, where even after recognition of rights, a forest area is to be declared as inviolate for wildlife conservation or diverted for any other purpose.

In case, any evictions of forest dwelling Scheduled Tribes and other traditional forest dwellers have taken place without settlement of their rights due to such major diversions of forest land under the Forest (Conservation) Act, 1980, the District Level Committees may be advised to bring such cases of evictions, if any, to the notice of the State Level Monitoring Committee for appropriate action against violation of the provisions contained in the Act.

The Act envisages the recognition and vesting of forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers over all forest lands, including National Parks and Sanctuaries.

No exercise for modification of the rights of the forest dwellers or their resettlement from the National Parks and Sanctuaries can be undertaken, unless their rights have been recognized and vested under the Act.

No eviction and resettlement is permissible from the National Parks and Sanctuaries till all the formalities relating to recognition and verification of their claims are completed.

The State/UT Governments may, therefore, ensure that the rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers, residing in National Parks and Sanctuaries are recognized first before any exercise for modification of their rights or their resettlement, if necessary, is undertaken and no member of the forest dwelling Scheduled Tribe or other traditional forest dweller is evicted from such areas without the settlement of their rights and completion of all other actions required under the Act.

The State Level Monitoring Committee should monitor compliance of the provisions of the Act, which recognizes the right to in situ rehabilitation including alternative land in cases where the forest dwelling Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land without receiving their legal entitlement to rehabilitation, and also of the provisions of Section 4(8) of the Act, which recognizes their right to land when they are displaced from their dwelling and cultivation without land compensation due to State development interventions.

Rights to live a free life is a fundamental right of the citizens and through mining it will not only snatch away their home also would affect their mode of survival. Indigenous Tribes are the real conserver of Mother Nature and most of the urban people are thinking of making big buildings and luxurious home which is destroying our Mother Nature.

U/S 2 of The Forest Conservation Act,1980 which states Restriction of on the de-reservation of forests or use of forest land for non-forest purposes without the permission of CG there shall be no work. CG must go through Socio-Impact Assessment before making a decision for any purpose.

**4. Whether the Environmental Clearance is valid or not?**

Yes according to my analysis the Environmental Clearance was not valid and violated of India Article 19(1)(a) of the Constitution.

That the legal validity of Clearance of forest Land. The GoI has looked into the matter of Industries but has left the rights of Schedule tribes by clearing all legal matter for granting permission for mining in the forest considerd sacred by the tribes.

A Public Hearing of the tribal community, residing in SWADESHI, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government and as such a hearing need not be made which is violating the fundamental principles as well as Tribal rights for their land for non-agricultural purposes. This is the violation of Article 19 of the constitution.

The Gram Panchayat did not raise any objections against the Project for the Environment Clearance and permitted EC without the consent of indigenous tribes and violating the Right to Express as Indigenous Tribes are the people who would be directly affected by such actions of GoI. Here Gram Panchayat would have called the Tribal Community to a discussion & problems they could face but without consulation of the indigenous tribal community they put in forth their own inerest over it.

Precautionary Principle must be applied in this case as there are hazardeous substance in mining i.e. the Uranium. It is a radioactive material and could damage land and forest which could last to decades. So applying PP can protect the sacred land & forest on which indigenous people reside .

Look at this case where court ordered to dismiss the work of mining which would cause sevour damage to the environment.

CASE: Rural Litigation and Entitlement Kendra & Ors. v. State of Uttar Pradesh & Ors. ; Supreme Court of India

This case is also known as the ‘Dehradun Valley Litigation’. In Mussoorie hill range of Himalayas, the activity of quarrying was being carried out.  Limestone was extracted by blasting out the hills with dynamite. This practice has also resulted in cave-ins and slumping because the mines dug deep into the hillsides, which is an illegal practice per se. Due to lack of vegetation many landslides occurred, which killed villagers, and destroyed their homes, cattle and agricultural land. It was contended by the mining operators that the case should be dismissed by the court and the issue should be left to the administrative authorities under the Environment Protection but the Court rejected the miners’ arguments the ground that the litigation had already commenced and significant orders had been issued by the court before the adoption of the Environment Protection Act. Later a monitoring committee was made. Monitoring Committee directed the company in certain way but the lessee continued to quarry limestone in an unscientific manner and in disregard of the directions issued by the Monitoring committee. In an application filed by the committee, the court held that the mining activity secretly carried on by Vijay Shree Mines had caused immense damage to the area and directed the firm to pay Rs. 3 lakhs to the fund of the Monitoring committee. After years, the Supreme Court of India has held that pollution caused by quarries adversely affects the health and safety of people and hence, the same should be stopped. The right to wholesome environment is a part of right to life and personal liberty guaranteed under Article 21 of the Constitution. This case was the first requiring the Supreme Court to balance environment and ecological integrity against industrial demands on the forest resources. The Court issued the following directions:

Orders that mine lessees whose operations were terminated bythe court would be given priority for leases in new areas open limestone mining.

Orders that the Eco-Task Force of the central department of Environment reclaim and reforest the area damaged by mining and that workers displaced by mine closure be given priority for jobs with the Eco-Task Force operations in the region.

This judgment proved how dangerous is mining and could cause major issues to the natives living there.

**PRAYER**

In the light of above mention issues raised, arguments advanced and authorities cited, the appellant humbly submits that the Hon’ble Court may be pleased to adjudge and declare that:

* The Article 21 is violated, the indigenous community may seek redressal for the violation of their fundamental rights.
* The Environmental Clearance shall be set aside.

And to pass any such order or orders as the Hon’ble Court may deem fit and proper in the light of justice, equity and good conscience. The counsel shall forever beseech this Honorable Court for its Honorable Consideration.

(Swadeshi Surasksha Samiti)

Counsel for the Appellant

**BEFORE THE HON’BLE HIGH COURT**

Swadeshi Suraksha Samiti………...............................…………..Appellant

v.

Union of India Through its Secretary Department of Atomic Energy New Delhi - 110001 ….Respondent No.1

Uranium Corporation Limited

New Delhi - 110001 ......Respondent No.2

MEMORANDUM OF BEHALF OF THE RESPONDENT

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D.V : Domestic Violence

D.P.A : Dowry Prohibition Act

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* Ratanlal & Dhirajlal, Commentary on The Code of Criminal Procedure.
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**Cases Referred:**

* A Nawab John v. V Subramanayam
* A.Z Mohd. Farooq v. State Govr.
* Chandel Ranjit Kunwar v. hiralal
* Brij Bihari lal v. phunni lal
* Vijay kumar v. Kamlabai
* Salil Dutta v. T.M & M.C (p) Ltd.
* Sudha devi v. mp narayanan
* Gullipali srinivasa v. gullipalipydithalli
* Ramnath sao v. gobardhan sao
* Bipin chander v. prabhavati
* State of WB v. howarh municipality
* Anupama misra v. bhagoban misra
* Sundarajan v. ashok kumar

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**STATEMENT OF JURISDICTION**

THE COUNSEL FOR THE PETITIONER WOULD LIKE TO PRESENT THE CASE IN THE JURISDICTION OF THE HONORABLE SUPREME COURT THE PETITIONER HUMBLY SUBMITS TO THE JURISDICTION OF THIS HONOURABLE COURT UNDER ART 32 OF THE CONSTITUTION. THE PETITIONER HAS APPROACHED THIS HONOURABLE COURT IN APPREHENSION OF THE VIOLATION OF RIGHTS THAT INEVITABLY OCCUR SHOULD THE IMPLEMENTATION OF THE POLICY OF THE GOVERNMENT NOT BE STOPPED. THEREFORE, THE PETITIONER MAINTAINS THAT THE JURISDICTION OF ART 32 OF THE CONSTITUTION, WHICH PROTECTS THE CITIZENS OF INDIA FROM ANY VIOLATION OF THEIR FUNDAMENTAL RIGHTS, IS APPLICABLE IN THE PRESENT CASE.

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1. The Territory of INDIA, a developing country, with about 40% of the population involved in and carrying out agricultural Activities. India is rich in atomic resources, especially Uranium which is found in the mineralized zone of ‘HITHRO’, declared as a ‘Scheduled Area’ under Panchayat Act, 1996, which covers an area of 25 sq. km. in the ‘Reserve Forest’ of SWADESHI, an area of 125 sq. km where tribal communities ‘LETRIA’, ‘LORTEP’ and ‘LANOITAN’, of about 400 to 450 in number live in the State of REALKHAND.

**2**. The aforementioned tribal communities derived their means of livelihood from the forest lands of “SWADESHI” by carrying out activities such as apiculture, gathering of herbs, flowers and fruits and collection of gum dust and other produce. Although SWADESHI was rich in atomic resources, the commercial exploitation of the same was not permitted, as India took pride in the natural biodiversity comprising of rare flora and fauna, including the bar-headed goose and tufted duck that it possessed, in the forests of SWADESHI.

3. India incurred an electricity-crisis as on 12th January 2012 that led to reduced supply of electricity to major areas of the Industry. As a result, several industries had to be shut down, temporarily, and several workers were either laid off in accordance with law. On 26thMay 2012, The ‘ALL INDIA LABOUR FORUM’ approached the SC , and sought to quash the Permission accorded to the Industries to lay off the employees, and also to direct the GoI to provide for a remedy to the power crisis. The Court passed an order that directed the GoI to initiate action to resolve the electricity crisis.

4. The GoI, on 20th August 2012, in light of the Report submitted by the DoAE on 11th July 2012, leased an area of 45 sq. km, inclusive of the Scheduled Area, form the lands of SWADESHI, for a period of fifty years, to UCIL , a fully owned entity of the DoAE, India. In the months of August-September 2012. Further, SSS, an NGO, protested that Uranium mill tailings retain about 85% of the original radioactivity of the ore, and it is very difficult to minimize releases of radioactive decay products. They also alleged that the said mining activity would hinder their livelihood and peaceful existence in the forests of SWADESHI.

5. On 16th December 2012, UCIL gave a Tender Notification, to sub-lease the process of extraction of minerals from the ores of SWADESHI, RUC , by reason of being the highest bidder, was granted the lease on January 30th 2013. As per the agreement between the UCIL and RUC, the Extracted Minerals are to be owned by the UCIL, and the land is leased to RUC for a period of 30 Years. It commencing from the date of grant of ‘Environmental Clearance’, by the ‘Ministry of Environment and Forests, GoI, for the process of extraction. Further, the agreement provided that the complete output of RUC shall be provided to the UCIL, and payment for extraction of the same shall be made, by UCIL, at the rate prescribed by the ‘Evaluation Committee’ to be constituted by the DoAE.

6. The RUC applied for an Environmental Clearance , after due compliance with the necessary Rules and Regulations in this regard, on 13th July 2013. The Gram Panchayats, living in and around the vicinity of the Forests of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance. The Gram Panchayats did not raise any objections against the Project.

7.The Notification that provided for a Public Hearing of the tribal community, residing in SWADESHI, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest and the property rights of the same, vested with the Government and as such a hearing need not be made.

8. On 1st June 2014, A Conditional Environmental Clearance was granted for a period of 30 years. 05th July 2014, RUC managed to get a Forest Clearance for carrying out the mining activities in the Reserve Forest Area. The tribal communities were not in favor of the Project, they agitated, in vain, on grounds that they were to be displaced of the lands that were their homes and were also sacred to them.

9.SSS, espoused the cause of the tribal communities, alleged that the Environmental Clearance that was granted was not in consonance with the objects of the Environment (Protection) Act, 1986 and the Forest Conservation Act, 1980, and SSS, thereon filed a Writ Petition under Article 32 of the Constitution of India, on 14th July 2014.

. **ISSUES RAISED**

1. WHETHER THE WRIT PETITON FILED UNDER ART. 32 OF THE CONSTITUION OF INDIA MAINTAINABLE

1.1.The petition has been filed in public interest and therefore maintainable as public interest litigation

1.2.Alternative remedies not a bar

1.3.The jurisdiction of the SC under Art. 32 of the Constitution extends to violation of the

rights alleged in the present matter

2. WHETHER THE IMPLEMENTATAION OF POLICY DECISION OF GOVERNMENT OF INDIA VIOLATES ART. 14, ART. 21 AND RULE OF LAW

2.1.Arbitrary and capricious acts of the State are annulled by Art. 14

2.2.The Policy of mining in the forests of Swadeshi is arbitrary and capricious and

hence violates of Art. 14 and Art. 21

3. WHETHER THE RIGHTS OF THE TRIBAL COMMUNITIES ARE INFRINGED BY THE MINING PROJECTS

3.1.Violation of Constitutional protection and safeguards

3.2.The forced assimilation of indigenous people violates constitutional provisions of

India and international conventions & treaties

4. WHETHER THE ENVIRONMENTAL CLEARANCE IS VALID

4.1.Environmental clearance invalid based on procedural violations

4.2. Violation of Mines and Minerals (Development and Regulation) Act, 1957 4.3.Environment Clearance when validated

Memorandum for the Petitioner

**SUMMARY OF ARGUMENTS**

* **The Gram Panchayats did not raise any objections against the Project for the Environment Clearance and permitted EC without the consent of indigenous tribes.**
* **Indigenous Tribal community protesting against mining process on the order given by GoAE.**
* **Violation of Right to Live in healthy environment and Right for the freedom of speech and expression regarded as the fundamentals of the Constitution.**
* **The Notification that provided for a Public Hearing of the tribal community, residing in Swadeshi, scheduled to be held on 19th August 2013, was cancelled on the ground that the said lease-area was within the Reserved Forest**

**ARGUMENTS ADVANCED**

**CONTENTION A**

**1. WHETHER THE APPEAL MADE BY THE APPELLANT AGAINST THE SESSION COURT, IS MAINTANINABLE OR NOT?**

The counsel for the respondent would like to humbly submit before the hon’ble Supreme Court that appeal against the GoI decision is not maintainable in the court of law. Article19 & 21

**2. Whether the rights of the tribal communities are infringed by mining projects?**

**NO, the tribal community’s rights were not infringed as the GoI acquired for mining is away from the homes of the tribals can depend on their nearby forest and the part of land acquired is not destroying their build homes.**

**3. Whether the implementation of policy decision of GoI violate Article 14 & 21 & Rule of Law?**

**The land acquired for mining is around 45km2 out of 125km2 and land is barren infertile for agriculture & is full of wild trees and plants.**

**The land allotted is rich in Uranium which will fulfill 60% of the need that the Bharat need’s.**

**According to Section 41(3) of LARR Act,2013** In case of acquisition or alienation of any land in the Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level in Scheduled Areas under the Fifth Schedule to the Constitution, as the case may be, shall be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency, before issue of a notification under this Act, or any other Central Act or a State Act for the time being in force: Provided that the consent of the Panchayats or the Autonomous Districts Councils shall be obtained in cases where the Gram Sabha does not exist or has not been constituted.

**Gram panchayat have given the environmental clearance which is satisfactory for the acquisition of the land acquired for the land mining of Uranium.**

**4. Whether the Environmental Clearance is valid or not?**

**The EC was valid and given at the free consent of all the members of the panchayat**

The Gram Panchayats, living in and around the vicinity of the Forests of SWADESHI, were consulted in a Public Hearing on 17th August 2013, in respect of the Environmental Clearance for carrying out the Mining-operations. The Gram Panchayats did not raise any objections against the Project.

**PRAYER**

In the light of above mention issues raised, arguments advanced and authorities cited, the appellant humbly submits that the Hon’ble Court may be pleased to adjudge and declare that:

* The issues raised by the appealant to be dismissed.
* The EC provided by the Panchayat to be legal and fair .

**And to pass any such order or orders as the Hon’ble Court may deem fit and proper in the light of justice, equity and good conscience. The counsel shall forever beseech this Honorable Court for its Honorable Consideration.**

Counsel for the Respondent

*Before*

**THE HON’BLE SUPREME COURT OF EUREKA**

**UNDER ART. 136 OF THE INDIAN CONSTITUTION**

**SPECIAL LEAVE PETITION (Cri.) NO. /OF 2014**

***IN THE MATTER OF***

**DAVID & ANR. APPELLANTS**

**v.**

**STATE OF WALDHIEM RESPONDENTS**

**COUNSELS APPEARING ON BEHALF OF APPELLANTS DAVID AND UJWAL PUROHIT**

**TABLE OF CONTENT**

**LIST OF ABBREVATIONS**

|  |  |
| --- | --- |
| **Abbreviation** | **Meaning** |
| & | And |
| Crim.L.J. | Criminal Law Journal |
| S.C.C. | Supreme Court Cases |
| A.I.R. | All India Record |
| Cr. PC | Criminal Procedure Code |
| v. | Versus |
| IPC | Indian Penal Code |
| JJ Act | Juvenile Justice (Care and Protection) Act, 2000 |
| JJ Rules | Juvenile Justice (Care and Protection) Rules, 2007 |
| JB | Juvenile Justice Board |
| w.e.f | With Effect From |
| Vol. | Volume |
| Ed. | Edition |
| i.e., | That Is |
| Id. | Ibid |
| L.J. | Law Journal |
| Cri | Criminal |
| No. | No. |
| Art. | Article |
| JBC | Juvenile Board committee |
| SC | Supreme Court |
| HC | High Court |
| U/s. | Under Sections |
| Sec. | Section |
| IPC | Indian Penal Code |
| Govt. | Government |

|  |  |
| --- | --- |
| Ltd. | Limited |
| A.L.D. | Andhra Legal Judgments |
| JBC | Juvenile Board Committee |
| M.P. | Madhya Pradesh |
| U.P. | Uttar Pradesh |
| H.P. | Himachal Pradesh |
| Anr. | Another |
| Ors. | Others |
| S.C.R. | Supreme Court Reporter |
| Supp. S.C.R. | Supplementary Supreme Court Reporter |
| M.L.J. | Madras Law Journal |
| ALL CC | Allahabad Criminal Cases |
| A.L.J. | Allahabad Law Journals |
| Cal. | Calcutta |
| D.L.T. | Delhi Law Times |
| I.L.R | Indian Law Reports |
| J.L.J. | Jabalpur Law Journals |
| S.C.A.L.E. | Supreme Court Almanac |

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**STATEMENT OF JURISDICTION**

THE APPELLANTS HAVE THE HONOUR TO SUBMIT BEFORE THE HON’BLE SUPREME COURT OF EUREKA, THE MEMORANDUM FOR THE APPELLANTS UNDER ART.1361 (SPECIAL LEAVE PETITION) OF THE INDIAN CONSTITUTION IN THE INSTANT MATTER OF DAVID & ANR. v. STATE OF WALDHIEM.

THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS.

**STATEMENT OF FACTS**

For the sake of brevity and convenience of the Hon’ble Court the facts of the present case are Summarized as follows:

On 21st August 2014, The Appellants David and Ujwal Purohit have approached the Hon’ble Supreme Court of Eureka for the remanding of the case to the Juvenile Board and Suspension of the punishment respectively.

History of the Case:-

* David is 17 years old boy who is an orphan brought up at Bosconet Eureka, a government funded orphanage in the vicinity of District Guradom, Waldhiem State, in the Republic of Eureka. The Orphanage is Controlled and administered by the government of Eureka and was maintained by Mr. K Raju.
* David being orphan he is very Stoic and Introvert and has never been found in the company of studious orphans. Ujwal Purohit is 15 years old and son of Mr. K Raju.
* On 13th March, 2015, when only David and Ujwal Purohit were there in the orphanage with the security guards, they planned to visit an exhibition organized by some NGO in the nearby village. Since the warden and other authorities were not present at the orphanage and couldn’t have been contacted, the security guards refused them to go outside.
* Ujwal Purohit being shrewd and crook persuaded David to come along and climb the wall of the orphanage and accompanies him for the exhibition. Both without coming into the notice of the security guards climbed the wall and ran away.
* In the exhibition Ujwal Purohit had a quibble with a child named Mohan to buy the same toy gun. The quibble turned into a quarrel and then into a fight, David accompanied Ujwal Purohit and took an iron rod and aggressively stroked on the head of the due to which he got fainted.
* Ujwal Purohit understanding the circumstances fled from the place immediately but David was caught as he kept standing over there. He was given to the police and was arrested under the charge of murder and Mohan was taken to the nearby hospital.
* After two days of head injury Mohan died. After three days of death of Mohan, Ujwal was also arrested from the Bosconet Eureka.
* Medical Evidence was given that Mohan received head injury along with permanent dislocation of jaw and the head injury was sufficient to cause the death of a person of that age i.e., 18 years in ordinary course of nature.
* On 8th June, 2014 Juvenile board found David to be well aware of the circumstances and consequences of his act therefore committed his case to the Sessions Court, finding him cap ax of committing the crime.
* Both were tried separately under U/s 304/326 read with Sec. 34 of IPC, 1860. Ujwal Purohit was tried by Juvenile Board, Guradom and David was tried by the Sessions Court, Guradom.
* David submitted to the Court that it has no jurisdiction to try his case him being a juvenile and his case should be remanded back but his submission was rejected due to insufficiency of evidence of age.
* On 30th July, 2014 Juvenile Board, Guradom found Ujwal Purohit guilty under U/s 304/326 read with Sec. 34 of IPC, 1860 and directed him to be sent to Special Home for a maximum period of one and half year.
* Later on that day an appeal was preferred seeking suspension of punishment against the judgment of Juvenile Board, which was dismissed by the Sessions Court on the ground that the Juvenile Board has proved the case beyond reasonable doubt based on circumstantial and medical evidence and no other question of law was raised by the Appellant in the appeal.
* A petition under Sec. 482 of Cr. PC, 1973 was filed in the High Court by David seeking remanding back of the case to the Juvenile Board since the board has erred the case due to insufficiency of evidence and Sessions Court is causing abuse of process of law as it has no jurisdiction to try his case. Another petition was filed by Ujwal Purohit for review of the order of the Sessions Court.
* Both the petitions were dismissed by the High Court, on the ground that convict being Capax of committing the crime and the conduct of the accused reflects intention to commit crime in the case of David and that the petition lack merits in the case of Ujwal Purohit.

**ISSUES RAISED**

The following questions are presented for adjudication in the instant matter:

1. WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?

2. WHETHER THE SAID DEATH CAN BE TERMED AS CULPBALE HOMICIDE OR NOT?

**SUMMARY OF ARGUMENTS**

**WHETHER THE SAID DEATH CAN BE TERMED AS CULPBALE HOMICIDE OR NOT?**

The counsel humbly submits that the punishment of appellant No. 2 be suspended. It can be contended on the basis of direct as well as circumstantial evidences which are not able to prove the factor of application of Common intention in the present case. The fact that the appellant No. 2 was just involved in a fight about a toy gun at the exhibition had nothing to relate to his ultimate planned aim to be causing grievous hurt to the deceased i.e., Mohan. From the facts it is evident that his actions during the committing of offence were merely due to his presence when the appellant no. 1 committed the offence. It is further contended that fleeing of the appellant from the crime site does not amount to any kind of planning.

* **WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?**

The Counsel humbly submits before the Hon’ble Court that the case of Appellant No.-1 should be remanded back to the juvenile board. This can be contended on the basis the main aim behind the formation of the juvenile justice act is keeping the technicalities out of the way and acting in the best interest of juvenile so that justice is served to him. In the present case, the conduct of courts shows that there is flagrant violation of provisions regarding the assembling of proper evidence pertaining to age of the appellant no.1. Whereas in the case of JBC, the fact sheet remains silent about the evidences gathered at this stage, and the judgment pronounced by the JBC show that its decision in the case of appellant no. 1 is on the basis of his mental capacity rather than ruling factor mentioned in the JJ Act, 2000 and the JJ rules, 2007 of also on the basis of the principle of presumption of age of innocence under JJ Rules, 2007 the case of the appellant no. 1 is liable to be remanded back to the JBC. At the sessions court there is flagrant violation of the rule 7(A) of the JJ Act, 2000, where the Appellant sets up a claim of his juvenility but nothing is by the Sessions court in order to inquire about his age. It is thus contended that there is serious abuse of rule of law and also the abuse of power by the Sessions court.

**ARGUMENTS ADVANCED**

* **WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?**

The counsel most humbly submits that the case of Appellant no. 1 (i.e., David) should be remanded back to the JBC him being a juvenile17. It is evident from the fact sheet that the age of Appellant no. 1 (i.e., David) was 17 years. It is contended that the Sessions court has rejected the submission18 made by the juvenile regarding his age in the court saying that there was insufficiency of evidence of age*.* **[Arguendo]** Even if we assume that there was insufficiency of evidence regarding the age of the Appellant No. 1 (i.e., David), the court should have followed the procedure mentioned in JJ Act, 200019 read along with Rules mentioned in JJ Rules, 200720 for determining the age of juvenile when the claim for the juvenility was raised by him in the Sessions Court, so that the court would have arrived at the correct conclusion and the justice would have been served to the Juvenile. It is further contended that under sub- section (2) of the Sec. 7 of JJ Act, 2000 the competent authority is required to hold the inquiry as if the juvenile had originally been brought before it. Thus, whenever a plea is taken by an accused that he is a juvenile then the competent court dealing with such case is required to record his/her opinion on such plea21. In the present case if the competent court would have held the inquiry then it must have not come to the conclusion that there are insufficient evidences because the Rule 12 of the JJ rules, 2007 accommodates all the procedure which is sufficient enough to reach to the conclusion in finding the age of a juvenile in conflict with law. It is therefore contended that the Sessions court has caused miscarriage of justice by omitting to do inquiry in determining the age of the juvenile due to which justice has not been served to the Appellant No. 1 (i.e., David). The counsel would further base its argument that there was flagrant violation of the provisions of JJ Act, 200022 and the Provisions of the JJ Rules, 200723 and hence the case is liable to be remanded back to the JBC.

17 **Section 2 (K) of JJ Act, 2000 defines Juvenile as –** “juvenile” or “child” means a person, who has not compl

The counsel humbly submits that the Sessions court has caused abuse of power by violating Sec. 7 (A) of JJ Act, 2000 which is a mandatory provision which is to be followed by all courts in the territory of India, whenever a claim of juvenility is raised before them. It is contended that Sessions judge has a power to conduct the inquiry to determine whether the juvenile in conflict with law is a juvenile or not24.

The counsel seeks attention of the Hon’ble court on **Section 7 (A) of JJ Act, 200025 which reads as – “Procedure to be followed when claim of juvenility is raised before any court”**

* Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of the commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as merely as may be:

Provided that a claim of juvenility may be raised before any court and it shall be recognized at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made there under, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

* If the court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have the effect.

Before proceeding further the counsel would also like to bring into light clauses (1), (2) and

(3) of Rule 12 of the JJ Rule, 2007 which read as – **“Procedure to be followed in determination of Age.”**

* In every case concerning a child or a juvenile in conflict with law, the court or the Board

24Law Relating to Juvenile justice in india, R.N. Choudhary, 2nd edition 2008

25 Inserted vide Juvenile Justice (Care and Protection of Children) Amendment Act, 2006, Sec.8

or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

* The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.
* In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining –
* (I) the matriculation or equivalent certificates, if available; and in the absence whereof;
* The date of birth certificate from the school (other than a play school) first attended; and in the absence whereof;
* The birth certificate given by a corporation or a municipal authority or a Panchayat;
* And only in the absence of either (I), (II) or (III) of clause (A) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (A) (I), (II), (III) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

It is contended that even if we say that the inquiry was conducted by the Sessions Court to determine the age of the juvenile based on the procedure mentioned in Sec. 7 (A) and by

following the Rule 12 of JJ Rules, 200726. But still the Sessions court is saying that there was insufficiency of the evidence regarding the age of the Appellant no. 1 (i.e., David), this can only be said by the Sessions Court in two possibilities which are as –

**[Possibility 1]**

That the Sessions Court relied on the evidence produced before it under Rule 12 clauses (1),

(2) and Clause 3 Sub-clause (a) of JJ Rules, 2007, which is not so in the present case as there is no mention of any evidence being produced before the Sessions Court regarding the age of Appellant No. 1(i.e., David), such as – Matriculation Certificate, Certificate of Date of Birth from the school first attended, or the birth certificate given by a corporation or a municipal authority.

**[Possibility 2]**

That the Sessions court did rely on the Clause 3 Sub- Clause (b) of JJ Rules, 2007 in the absence of evidence under Clause 3 Sub – Clause (a) of the JJ Rules, 2007 but was not still satisfied and went on to conclude that there was insufficiency of evidence of age. Clause 3 sub – clause (b) of the JJ Rules, 2007 mentions about the medical test which is to be conducted by the JBC in the absence of any document as mentioned in the Clause 3 Sub – Clause (a) of the JJ Rules, 2007 since the fact sheet is silent on the issue as to whether the evidences pertaining to the age of Appellant were submitted to the Sessions Court therefore it can be concluded that the Sessions Court must have gone to the last resort of conducting the medical inquiry of the appellant, so that a conclusive decision would have come out and the age of the juvenile would have been determined to overcome the insufficiency of the evidence. The medical inquiry is also the part of procedure laid done in the Rule 12 of JJ Rules, 2007, But in the present case there is no as such mention of the Medical Enquiry being done by the Sessions Court. Therefore, it is safe to contend that medical enquiry was not conducted by the Sessions court and the Sessions court has erroneously rejected the submission of the Appellant without going into the intricacies of the case.

The Counsel further submits that in the case of delinquent juvenile the matter has to be determined in totality i.e., in case of two views of the competent authority regarding the age of juvenile and even after conducting the proper inquiries relating to his age the competent

authority still has two views regarding the same, medical evidence has to be considered and the whole matter has to be decided in the totality27. In the present case the Sessions court has not determined the matter in totality and also has omitted to do his duty of serving the justice in accordance with the procedure established by the governing law. Therefore it can be contended that the Sessions Court has violated the provision mentioned in Sec. 7 (A) of JJ Act, 200028 regarding the age of the juvenile which has to be followed by the Sessions court while deciding case of the juveniles upon which a duty comes to decide the case.

It is contended that the Hon’ble Court in the case of **Hari Ram v. State of Rajasthan**29 held that –

“Wherein the appellant was held to be a juvenile on the date of commission of the offence. His appeal against his conviction was allowed and the entire case remitted to the Juvenile Justice Board for disposal in accordance with law”

The Hon’ble court in the case of **Daya Nand v. State of Haryana30**, followed the judgment delivered by the court in the case **Hari Ram v. State of Rajasthan**31 and directed the appellant to be produced before the Juvenile Justice Board for passing appropriate orders in accordance with the provisions of the JJ Act, 2000.

The sum and substance of the above discussion is that in the above mentioned cases the Hon’ble court has remitted the entire case for consideration by the jurisdictional Juvenile Justice Board, both on the innocence or guilt of the juvenile as well as the sentence to be awarded if the juvenile is found guilty of such offence due to the fact that the court find the accused to be a juvenile on the commission of the crime. In the present case since there is no need to focus whether the juvenile is guilty or not, the case is only concerned with the remanding back of the case to the competent authority to try his case, him being a juvenile therefore it is submitted before the Hon’ble court relying on the above mentioned judgments that the case of appellant no. (i.e., David) should be remanded back to the Juvenile Board Committee. Hence, the case of the Appellant is liable to be remanded back to the Juvenile

27 Mehmood Khan v. State, 2002 Cri.L.J. 2123 (Raj.)

28 Supra note 4

29 (2009) 13 S.C.C. 211

30 (2011) 2 S.C.C. 224

Board Committee.

**2. WHETHER THE SAID DEATH CAN BE TERMED AS CULPABLE HOMICIDE OR NOT.**

The counsel most humbly submits before the Hon’ble court that the punishment of Appellant No. 2 (i.e., Ujwal Purohit) should be suspended as there is improper evidence to prove him guilty U/s 30432/32633 read with Sec. 3434 of Indian Penal Code, 1860. It is contended that the Appellant No. 2 (Ujwal Purohit) has been charged along with Appellant No. 1 (i.e., David) U/s 30435 / 32636 read with Sec. 3437 of the IPC, 186038 . The counsel further submits that the decision taken by JBC in awarding the punishment to Appellant No. 2 U/s 304 / 326 read with Sec. 34 of the IPC, 1860 and sending him to the remand home for a period of one and a half years is not justified and is thus, incorrect in law. It is contended that criminal law has a well settled principle which says that until and unless a person is proven guilty he stand innocent in the eyes of law.

It is further contended that in the case of **Sakha Ram v. State of M.P.**39 the Hon’ble Court held that –

**“**When the presumption of juvenile innocence is sought to be displaced by the prosecution on the basis of circumstantial evidence the circumstances must

32 **Sec. 304, I.P.C.,1860:** Punishment for culpable homicide not amounting to murder: Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment f or life], or imprisonment of either description f or a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description f or a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

33 **Sec. 326, I.P.C.,1860** : Voluntarily causing grievous hurt by dangerous weapons or means: Whoever, except in the case provided f or by Section 335, voluntarily causes grievous hurt by means of any instrument f or shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of f ire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment f or life], or with imprisonment of either description f or a term which may extend to ten years, and shall also be liable to fine.

34 **Sec. 34, I.P.C., 1860:** Acts done by several persons in furtherance of common intention.--When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

35 *Supra* note 30

36 *Supra* note 31

37 *Supra* note 32

38 w.e.f October 6, 1860

39 1992 JIC 325 (SC)

*unmistakably prove the guilt beyond reasonable doubt.”*

Thus, relying on the above judgment the counsel further submits before the Hon’ble court that in the present case the circumstantial evidences and the circumstances pertaining to the committing of the offence by the juvenile are not proved beyond reasonable doubt and thus, it is contended that the presumption of innocence lies in favor of the Appellant no. 2 (i.e., Ujwal Purohit) and hence he is innocent.

It is contended that the proof for common intention in the present case is seldom available. It has to be derived from the facts of the case, surrounding circumstances and conduct of the accused after the commission of crime. The Hon’ble court in the case of ***Krishnan* v. *State***40 held that –

“*The applicability of Sec. 34 is dependent on the facts and circumstances of each case. No hard-and-fast rule can be made out regarding applicability or non-applicability of Sec. 34.*”

Thus, relying on the above judgment it is contended that in the present case there are no circumstances or conduct by the Appellant No. 2 (i.e., Ujwal Purohit) which is proving that the proof of common intention can be said to be seldom available. Even in the present case there are no surrounding circumstances that can prove the case of Appellant No. 2 (i.e., Ujwal Purohit) that his conduct reflects the commission of crime. Therefore, it is submitted to the Hon’ble Court that there no such circumstances proving the mental intent of the accused beyond reasonable doubt thus, his punishment should be suspended.

The Hon’ble Court followed in the case of ***Girja Shankar* v. *State of U.P*.**41 followed the judgment delivered by it in the case of ***Krishnan* v. *State***42 –

“Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act

40 (2003)7 S.C.C. (Cri) 1577

41 (2004)3 S.C.C. 793: 2004 S.C.C. (Cri) 863

42 Supra note43

is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre- arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.”

Thus, relying on the above judgments it is contended that the present Sec. 34 is just a rule of evidence and does not establish any offence in particular. Further it is contended that in the present case there are no direct as well as circumstantial evidences which prove that the Appellant no. 1 has committed the crime jointly and also that he participated in the crime which is not so in the present case.

The Counsel, for further clarification of the Hon’ble Court, would rely on the judgment delivered by the Hon’ble Court in the case of ***Suresh* v. *State of U.P.***43 where the Hon’ble Court held that –

“*to attract section 34 IPC, 1860 two postulates are indispensible: (1) The criminal act (consisting of a series of acts) should have been done, not by one person, but more than one person; (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons*”.

The Counsel puts forth before the Hon’ble Court, a similar case of ***Jai Bhagwan* v. *State of Haryana***44 where it was again held by the Hon’ble Court that-

*“To apply Section 34, of IPC, 1860 apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence.”*

43 (2001)3 S.C.C. 673: 2001 S.C.C. (Cri) 601; Jai Bhagwan v. State of Haryana : (1999)3 S.C.C. 102

44 (1999)3 S.C.C. 102

Thus, relying on the above judgment it is contended that two factors laid down by the Hon’ble court for the application of Sec. 34 are not accomplice in the present case since common intention of the accused is not clearly inferable and further in the present case the Appellant No. 2 only participated during the quibble, quarrel and fight between the deceased (Mohan) and him but did not participated when Appellant No. 1 hit the deceased with the iron rod on his head. Thus it is contended that both the factors are not fulfilled in the present case and hence, the punishment of Appellant no. 2 be suspended.

Henceforth, the Counsel humbly submits furthermore contention for the clarity of the Hon’ble court -

* **IN THE PRESENT CASE EVIDENCE PERTAINING TO THE COMMON INTENTION AMONG APPELLANTS 1 AND 2 IS ABSENT:**

“*Common intention can be proved either from direct evidence or by inferring from the acts or attending circumstances of the case and conduct of the parties*45*.”*Here the Counsel humbly submits before the Hon’ble Court the facts of the case relating to the events that occurred when the offence was committed by the accused does not seem to attract the application of Sec. 34 in the present case. It is clearly mentioned that, *“In the exhibition Appellant no. 2 (Ujwal Purohit) had a quibble with a child of his peer named Mohan (son of a well known businessman) as both of them wanted to buy the same toy gun.”.* Thus, the main reason for the quibble between Appellant No. 2 and Mohan was acquiring of the toy gun. This quibble turned out to progress into a fight but the fact sheet remains silent about any kind of use of violence by the Appellant No. 2 (i.e., Ujwal Purohit). The is also unable to showcase any intention on the part of Appellant No. 2 of voluntarily causing any grievous hurt46 to the deceased (i.e., Mohan). In the case of ***Rajesh Govind Jagesha* v. *State of Maharashtra***47 the Hon’ble Court that common intention may also develop during course of events. But, in the present case nothing mentioned in the compels us to turn our thoughts towards the fact that the fight had come to such a level that Appellant No. 2 decided to give a death blow to the deceased. Thus, the Counsel submits that the acts of Appellant No. 2 confines only to the extent of indulging into a fight and not voluntarily causing grievous hurt as complementary to Appellant No.1 (i.e., David) act.

45 Pradeep Kumar v. Union of Admn: (2006) 10 S.C.C. 608: A.I.R. 2006 SC 2992: 2006 Crim.L.J. 3894

46 Sec. 326, IPC, 1860

47 (1999)8 S.C.C. 428: 1999 S.C.C. (Cri) 1452

Further, the Counsel seeks the kind attention of the Hon’ble Court on the fact that, *“David accompanied Ujwal Purohit and took an iron rod and aggressively strike it on the head of Mohan”*. The Counsel here contends that in the act of accompanying, David was the one who came along and took an iron rod and aggressively struck it on the head of Mohan, without any instigation or compelling or involvement by Appellant No. 2.Thus, it can be said that the Appellant No. 2 was merely present there without getting involved in the act committed by David. Thus, relying on the judgment delivered by the Hon’ble Court in the case of ***Ramaswamy Ayyangar* v. *State of Tamil Nadu***48 , where the held that presence should be in such a way that, “*in one way or the other facilitate the execution of a common design...”* the counsel submits that in the present case such kind of situation is not inferred from the circumstances and from the facts of the case. It is further contended that there was no active involvement of Appellant No. 2 in the act committed by David as he is not seen provoking or guiding the actions or guarding it against stopping the David midway in the commission of his act. This view point was upheld in the case of ***Ghanshyam* v. *State of U.P.***49, by the Hon’ble court that mere presence of a person at a crime scene does not put him at share of common intention. Also, In the case of ***Sanghara* v. *State***50 the nature of the injury inflicted was also considered to apply Sec. 34 of the IPC, 1860. Thus, fight of an unknown nature by anyone and grievous hurt by other cannot be taken into account as common intention.

In the case of ***Palanisamy* v. *State***51 , one of the accused persons caused single injury to the hand of the victim and thereafter ran away. He was not held liable for murder under the criteria of common intention along with the other accused. Thus events or actions of the accused before and after the commission of the act matters a lot to invoke Sec. 34 of the IPC, 1860. The Counsel herein humbly submits that the acts committed by Appellant No.-2 is only indulging in the fight and running away from the scene. His presence did not facilitate the offence. Also, it is said that, *“Sec. 34 intends to meet a case in which it is not possible to distinguish between the criminal acts of the individual members of a party, who act in furtherance of the common intention of all members of the party or it is not possible to prove exactly what part was played by each of them.52”* in the present case, even with the bare reading of fact it is evident that appellant no. 1 (i.e., Ujwal Purohit) did not intended to

48 (1976)3 S.C.C. 779: 1976 S.C.C. (Cri) 518

49 A.I.R. 1983 SC 193: 1982 S.C.C. (Cr) 449

50 1994 S.C.C. (Cr) 163: 1994 Crim.L.J. 1098

51 (2006)10 S.C.C. 297

52 Abdul Sayeed v. State of M.P. : (2010)3 S.C.C. (Cri) 1262

grievously hurt Mohan and was not involved in David’s act of causing a fatal blow to the deceased i.e., Mohan. The Part played by both the appellants is therefore clearly distinguishable. Thus, it can be soundly contended that the actions of Appellant No.-2 did not involve any common intention to voluntarily cause grievous hurt to the deceased (i.e., Mohan).

* **THERE IS NO EVIDENCE RELATING TO THE PLANNING OR MEETING OF MINDS BETWEEN BOTH THE APPELLANTS:**

The Counsel humbly submits before the Hon’ble court that there is no evidence pertaining to the sharing of common intention by both the appellants this implies does not constitute an action in concert and that it does not constitutes the existence of a pre-arranged plan amongst the perpetrators of the crime53. The establishment of a plan or a meeting of mind, whether direct or circumstantial, is necessary to invoke Sec. 34 of IPC, 1860. In most cases it needs to be gathered from the actions and circumstances of the commission of the act54. The Counsel further contends that, in the present case, the factors of planning are absent. This can be most likely contended through following points from the facts of the present case:

* They planned to visit an exhibition organized by some NGO in nearby village.
* Ujwal Purohit had a quibble with a child of his peer named Mohan (son of a well known businessman) as both of them wanted to buy the same toy gun.
* When the quibble turned into a quarrel and eventually into a ﬁght, David accompanied Ujwal Purohit and took an iron rod and aggressively strike it on the head of Mohan.
* Ujwal Purohit understanding the circumstances ﬂed from that place immediately but David was caught by the public as he kept standing there.

The only mention about existence of a plan in the is about the Appellants going to visit the exhibition and not indulging into a fight or causing grievous hurt to someone. Further, David was not involved in the fight between Ujwal Purohit and Mohan pertaining to toy gun, and, Ujwal Purohit was not involved, actively or passively, in the act of David striking on the head of Mohan. Finally, the clause of meeting of mind between both the accused is absent as far as the occurrence of crime is concerned, Ujwal Purohit flees away, committing to his own

53 Pandurang v. State: A.I.R. 1955 SC 216: 1955 Crim.L.J. 572

54 Kashmira Singh v. State: A.I.R. 1994 SC 1651: 1995 Supp (4) S.C.C. 558

understanding, and David stays back. Thus, the Counsel humbly submits before the Hon’ble Court that pertaining to the natural implications of the facts, there is no hint of presence of planning among both the accused in furtherance of a common intention. And also, it cannot be said that immediately fleeing of the Ujwal Purohit from crime scene does constitute that he was at fault it can also be contended that he fled from the fled due to the fact that he was shocked by the act of David.

The Counsel further submits that an important aspect of planning under Sec. 34, IPC, 1860, is mentioned in the case of ***Amrit Singh* v. *State of Punjab***55 . The Hon’ble Court held that, *“to constitute common intention, it is necessary that the intention of each one of them be known to the rest of them and shared by them.”* In the presentcase, there is no communication of the same between Appellant No. 1 and Appellant No. 2 about any of their actions. Thus, the Counsel finally relying on the above submissions and contentions submits before the Hon’ble court that is a lack of common intention and there is lack of meeting of minds, preconcert or planning between both the appellants. It is also submitted that Appellant no. 2 was not- involved in the crime of causing grievous hurt to the deceased i.e., Mohan which is evident from the fact sheet. Thus, the Counsel submits and pleads before the Hon’ble Court that the punishment of Appellant No.-2 (i.e., Ujwal Purohit) be suspended.

55 1972 Crim.L.J. 465 SC

**PRAYER**

*Wherefore, in the light of the facts presented, arguments advanced and authorities cited, the Petitioners humbly submit that the Hon’ble Supreme Court of Eureka be pleased to adjudge and declare that:*

* *The case of Appellant No. 1 (i.e., David) should be remanded back to the Juvenile Board Committee.*
* *The punishment of the Appellant No. 2 (i.e., Ujwal Purohit) should be suspended.*

*And pass any other relief, that this Hon’ble Supreme Court of Eureka may deem fit and proper in the interest of justice, equity and good conscience.*

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

Sd. /- (Counsel for the Petitioners)

*Before*

**THE HON’BLE SUPREME COURT OF EUREKA**

**SPECIAL LEAVE PETITION (Cri.) NO /OF 2014**

***IN THE MATTER OF***

**DAVID & ANR APPELLANTS**

**v.**

**STATE OF WALDHIEM RESPONDENT**

**COUNSELS APPEARING ON BEHALF OF THE RESPONDANT STATE OF WALDHIEM**

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**LIST OF ABBREVATIONS**

|  |  |
| --- | --- |
| **Abbreviation** | **Meaning** |
| & | And |
| Crim.L.J. | Criminal Law Journal |
| S.C.C. | Supreme Court Cases |
| A.I.R. | All India Record |
| Cr. PC | Criminal Procedure Code |
| v. | Versus |
| IPC | Indian Penal Code |
| JJ Act | Juvenile Justice (Care and Protection) Act, 2000 |
| JJ Rules | Juvenile Justice (Care and Protection) Rules, 2007 |
| JB | Juvenile Justice Board |
| w.e.f | With Effect From |
| Vol. | Volume |
| Ed. | Edition |
| i.e., | That Is |
| Id. | Ibid |
| L.J. | Law Journal |
| Cri | Criminal |
| No. | No. |
| Art. | Article |
| JBC | Juvenile Board committee |
| SC | Supreme Court |
| HC | High Court |
| U/s. | Under Sections |
| Sec. | Section |
| IPC | Indian Penal Code |
| Govt. | Government |
| Ltd. | Limited |
| A.L.D. | Andhra Legal Judgments |
| JBC | Juvenile Board Committee |
| M.P. | Madhya Pradesh |
| U.P. | Uttar Pradesh |
| H.P. | Himachal Pradesh |
| Anr. | Another |
| Ors. | Others |
| S.C.R. | Supreme Court Reporter |
| Supp. S.C.R. | Supplementary Supreme Court Reporter |
| M.L.J. | Madras Law Journal |
| ALL CC | Allahabad Criminal Cases |
| A.L.J. | Allahabad Law Journals |
| Cal. | Calcutta |
| D.L.T. | Delhi Law Times |
| I.L.R | Indian Law Reports |
| J.L.J. | Jabalpur Law Journals |
| S.C.A.L.E. | Supreme Court Almanac |

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* Girja Shankar v. State of U.P., (2004) 3 S.C.C. 793: 2004 S.C.C. (Cri) 863 15. Suresh v. State of U.P., (2001) 3 S.C.C. 673 : 2001 S.C.C. (Cri) 601;
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* JUVENILE JUSTICE RULES, 2007
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**STATEMENT OF JURISDICTION**

**THE APPELLANTS HAVE THE HONOUR TO SUBMIT BEFORE THE HON’BLE SUPREME COURT OF EUREKA, THE MEMORANDUM FOR THE APPELLANTS UNDER ART.1361 (SPECIAL LEAVE PETITION) OF THE INDIAN CONSTITUTION IN THE INSTANT MATTER OF DAVID & ANR. v. STATE OF WALDHIEM.**

**THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS.**

**STATEMENT OF FACTS**

For the sake of brevity and convenience of the Hon’ble Court the facts of the present case are Summarized as follows:

On 21st August 2014, The Appellants David and Ujwal Purohit have approached the Hon’ble Supreme Court of Eureka for the remanding of the case to the Juvenile Board and Suspension of the punishment respectively.

History of the Case:-

* David is 17 years old boy who is an orphan brought up at Bosconet Eureka, a government funded orphanage in the vicinity of District Guradom, Waldhiem State, in the Republic of Eureka. The Orphanage is Controlled and administered by the government of Eureka and was maintained by Mr. K Raju.
* David being orphan he is very Stoic and Introvert and has never been found in the company of studious orphans. Ujwal Purohit is 15 years old and son of Mr. K Raju.
* On 13th March, 2015, when only David and Ujwal Purohit were there in the orphanage with the security guards, they planned to visit an exhibition organized by some NGO in the nearby village. Since the warden and other authorities were not present at the orphanage and couldn’t have been contacted, the security guards refused them to go outside.
* Ujwal Purohit being shrewd and crook persuaded David to come along and climb the wall of the orphanage and accompanies him for the exhibition. Both without coming into the notice of the security guards climbed the wall and ran away.
* In the exhibition Ujwal Purohit had a quibble with a child named Mohan to buy the same toy gun. The quibble turned into a quarrel and then into a fight, David accompanied Ujwal Purohit and took an iron rod and aggressively stroked on the head of the due to which he got fainted.
* Ujwal Purohit understanding the circumstances fled from the place immediately but David was caught as he kept standing over there. He was given to the police and was arrested

under the charge of murder and Mohan was taken to the nearby hospital.

* After two days of head injury Mohan died. After three days of death of Mohan, Ujwal was also arrested from the Bosconet Eureka.
* Medical Evidence was given that Mohan received head injury along with permanent dislocation of jaw and the head injury was sufficient to cause the death of a person of that age i.e., 18 years in ordinary course of nature.
* On 8th June, 2014 Juvenile board found David to be well aware of the circumstances and consequences of his act therefore committed his case to the Sessions Court, finding him cap ax of committing the crime.
* Both were tried separately under U/s 304/326 read with Sec. 34 of IPC, 1860. Ujwal Purohit was tried by Juvenile Board, Guradom and David was tried by the Sessions Court, Guradom.
* David submitted to the Court that it has no jurisdiction to try his case him being a juvenile and his case should be remanded back but his submission was rejected due to insufficiency of evidence of age.
* On 30th July, 2014 Juvenile Board, Guradom found Ujwal Purohit guilty under U/s 304/326 read with Sec. 34 of IPC, 1860 and directed him to be sent to Special Home for a maximum period of one and half year.
* Later on that day an appeal was preferred seeking suspension of punishment against the judgment of Juvenile Board, which was dismissed by the Sessions Court on the ground that the Juvenile Board has proved the case beyond reasonable doubt based on circumstantial and medical evidence and no other question of law was raised by the Appellant in the appeal.
* A petition under Sec. 482 of Cr. PC, 1973 was filed in the High Court by David seeking remanding back of the case to the Juvenile Board since the board has erred the case due to insufficiency of evidence and Sessions Court is causing abuse of process of law as it has no jurisdiction to try his case. Another petition was filed by Ujwal Purohit for review of the order of the Sessions Court.
* Both the petitions were dismissed by the High Court, on the ground that convict being Capax of committing the crime and the conduct of the accused reflects intention to commit crime in the case of David and that the petition lack merits in the case of Ujwal Purohit.

**ISSUES RAISED**

The following questions are presented for adjudication in the instant matter:

* WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?

2. WHETHER THE SAID DEATH CAN BE TERMED AS CULPBALE HOMICIDE OR NOT?

**SUMMARY OF ARGUMENTS**

* **WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?**

The Counsel humbly submits before the Hon’ble court that in the present case facts of the case proves that the due process of law, laid down by the judicial as well as quasi judicial governing bodies, has duly followed the procedure governing them in all phases of inquiry or trial. It is contends by seeking attention of the Hon’ble Court; *firstly,* towards, the decision of Juvenile Board Committee which after conducting the proper inquiry in the case of appellant no. 1(i.e., David) committed his to the Sessions Court, *‘ﬁnding him Capax of committing an offence.’ Secondly,* it is was the duty of the appellant no. 1 to produce evidence pertaining to his age in the Sessions Court through Sec. 233 of Cr. PC, 1973 and Sec. 103 of Indian Evidence act, 1872, which has not happened in the present case and thus the Sessions Court rejected his argument regarding the plea of juvenility raised by him in the court. *Finally,* under Sec. 482 of the Cr. PC, 1973 the High Court exercises its inherent powers, only when there is an abuse of power by any lower court and with the aim to meet the ends of justice. In the present case the lower Courts does not show any abuse of powers and thus the jurisdiction under Sec. 482 of the High Court cannot be invoked. Also, the High Court cannot reappraise the evidence, unless it finds that there is any grave question of law and thus it is the duty of the HC to decide in the same manner as the Sessions Court has decided the case. Thus, considering all the facts and circumstances of the case the counsel submits before the Hon’ble court that there has been no error in deciding the case of Appellant Number-1(i.e., David) and thus the case is not liable to be remanded back to the Juvenile Board Committee.

2. **WHETHER THE SAID DEATH CAN BE TERMED AS CULPBALE HOMICIDE OR NOT**?

The Counsel humbly submits before the Hon’ble court that the punishment of the Appellant No.2 (i.e., Ujwal Purohit) cannot be suspended. It is contended that the basis of direct and circumstantial evidences proves that the Appellant Number-2 (i.e., Ujwal Purohit) had a common intention along with Appellant Number-1(i.e., David), to cause grievous hurt to Mohan as a consequence of which the deceased succumbed to death. The counsel further contends that it was Appellant No. 1(i.e., Ujwal Purohit), who had got into a quibble with Mohan, and further progressively took it to the stage of ‘fight’ which literally means use of certain amount of violence and aggression. Further, it was in this course of the fight that David accompanied him, and took an iron rod and aggressively struck it on the head of Mohan. A planning and meeting of minds between both the accused can be seen through the fact that one has decided to accompany the other and in the company of each other the offence took place. Also, Appellant Number-2 omitted to stop Appellant Number-1 from committing the offence. Thus, Counsel humbly submits that, considering all the facts and authorities cited there exist a common intention among the both the appellants which can be successfully derived in the present case from the facts and the previous ruling of the Hon’ble Court in various other matters pertaining to the Sec. 34 of IPC, 1860. Hence, the punishment of the Appellant No. 1 cannot be suspended and he is liable to be sent to the Special home for a maximum period of one and half years.

**ARGUMENTS ADVANCED**

* **INQUIRY BEFORE THE JUVENILE BOARD COMMITTEE:**

The counsel humbly submits that whenever a case is presented before the JBC, it holds an inquiry in accordance with the provisions mentioned in JJ Act, 20004 and makes such order in relation to the juvenile as it deems fit5. If the JBC is satisfied with the fact that accused is a Juvenile on the date of commission of the offence and is guilty of the offence, then the JBC cannot transfer the case of juvenile to the Sessions Court in accordance with the Principle of Non-Waiver of Rights6 mentioned in Rule 3 sub-rule (2) clause (IX) of JJ Rules, 20077. The Principle of Non – Waiver of Rights lays down that *‘a juvenile cannot be committed to a higher court if he is a juvenile’*, which the JBC has to abide by while deciding a case either in favor of the accused or against him, further this can be clearly said on the basis of Rule 3 clause (1) which states that the JBC has to abide by the rule mentioned Rule 3 of the JJ Rules, 2007.

The Rule 3 clause (1) read as –

*“The State Government, the Juvenile Justice Board, the Child Welfare Committee or other competent authorities or agencies, as the case may be, while implementing the provisions of these rules shall abide and be guided by the principles, specified in sub- rule (2)”.*

It is contended that, this is highly improbable that the JBC would rule against the aforementioned principle and the Principle of Best Interest8 to decide erroneously and transfer the case of the accused to the adult court i.e., the Sessions Court by violating the Rules mentioned in the JJ Rules, 2007. The decision pronounced by the JBC in the trial of

4 w.e.f. April 1, 2001

* Sec. 14: Juvenile Justice Act No. 56 of 2000.
* Principle of Non- Waiver of Rights**:** no waiver of rights of the child or juvenile in conflict with law, whether by himself or the competent authority or anyone acting or claiming to act on behalf of the juvenile or child, is either permissible or valid.
* w.e.f October 26, 2007
* Rule 3; Sub- Rule (2); Clause (IV) of the JJ Rules, 2007 w.e.f. October 26, 2007.

Appellant Number 1 states that- ‘*the Juvenile Board found David to be well aware of the circumstances and consequences of his act and therefore commit his case to Sessions Court finding him Capax of committing an offence9*’. For the clarity of the Hon’ble court the counsel would like to draw the attention of the Hon’ble Court towards the significance of word ‘*Capax*’ used by the Sessions Court while rejecting the submission of the Appellant No. 1. The meaning of the term ‘*Capax*’10 is *‘being capable of committing a crime especially with reference to the age’11*. It is evident from the meaning of the term used by the JBC that the JBC has taken proper measures and has followed the rules as mentioned in JJ Rules, 2007 while deciding the case of Appellant No. 1 (i.e., David). It is also clear that decision by the JBC is correct law and there is no place for illegality in the said judgment.

The counsel further contends that Sec. 4 Clause (3)12 of the JJ Act, 2007, mentions that no Magistrate is appointed to the JBC unless he has special knowledge or training in child psychology. Thus, the counsel acknowledges the expertise of the Magistrate of the JBC, for finding that David was well aware of the circumstances of his act. By analyzing the above statement it is clear that the JBC could easily locate the merits in the case of the Appellant No. 1 regarding both his intention and the ability to commit the offence along with the reasoning of his age. The counsel further seeks the attention of the Hon’ble court on the fact sheet that it is silent about any issue raised or submissions made by the Appellant before the JBC regarding his age when the case was under trial before them. Thus, the counsel is of the view that the JBC was satisfied that the appellant had the mental capacity to commit the

* *Supra* Note: 2
* Doli Capax: Deemed capable of forming the intent to commit a crime or tort, especially by reason of age.; [www.oxforddictionaries.com](http://www.oxforddictionaries.com/)
* Black’s Law Dictionary 712 (9th ed. 2009) CAPAX, DOLL. Lat.: Capable of committing crime, or capable of criminal intent. The phrase describes the condition of one who has sufficient intelligence and comprehension to be held criminally responsible for his deeds.
* Sec. 4 Clause (3) of JJ Act, 2001: No Magistrate shall be appointed as a member of the Board unless he has special knowledge or training in child psychology or child welfare and no social worker shall be appointed as a member of the Board unless he has been actively involved in health, education, or welfare activities pertaining to children for at least seven years.

crime. Thus, any error in the judgment of the Juvenile Justice Board cannot be observed therein.

* **WHETHER THE CASE OF DAVID SHOULD REINSTATE TO JUVENILE BOARD OR NOT?**

The counsel humbly submits before the Hon’ble court that in the present case of Appellant No. 1(i.e., David), the proceedings at various judicial as well as quasi judicial bodies show compliance with the procedures as established by the governing law with all their competence to ensure that justice is served to the appellant at each step. The counsel further submits that it is clearly evident from the fact sheet that the decision taken by the JBC was correct which found the Appellant No. 1 (i.e., David), to be well aware of consequences of his act and therefore committing his case to the Sessions Court finding him *capax* of committing the crime2. Since no other question was raised by the appellant in the JBC pertaining to his age therefore it is safe to say that the decision of the JBC is correct in law. It is contended that in the case of *Govinda Chandra* v. *State of West Bengal3* the Calcutta HC held that -

*“If no objection was raised before the magistrate that accused was a juvenile offender and the magistrate commits him to the court of sessions there was no illegality”*

Thus, relying on the above judgment it can be said that there was no illegality caused by the JBC while deciding the case and transferring it to the Session Court. Further it is contented that Sessions Court was also correct in rejecting the submission of the Appellant No. 1 (i.e., David) on the basis of insufficiency of evidences related to his age. Also, when the plea of juvenility was raised by him in the HC, the dismissal of the same by the High Court reflects the honest compliance of the HC with the rule laid down by the law governing it. For the further clarity of the Hon’ble court on the issue the counsel would base its arguments on three premises.

2 Statement of Facts: Para- 9

3 1977 Crim.L.J. 1499 : A.I.R. 1977 Cal 371 (FB)

* **THE TRIAL BEFORE THE SESSIONS COURT:**

The counsel humbly submits before the Hon’ble Court, that since the JBC had caused no error in committing the case of Appellant No.-1 to the Sessions Court13, the Sessions Court has therefore not caused an abuse of law in hearing his petition. The Counsel further contends that, that after the case was committed to the Sessions Court by Juvenile Board Committee, all the proceedings of Session court will have to be conducted in accordance with the procedure established by the Code of Criminal Procedure, 197314 and the case is to be opened by the prosecution under Sec. 22615 of the Cr. PC, 1973 which is invoked by the Sec. 209 of the Cr. PC, 1973. In the trail process, through Section 23216 of Cr. PC, 1973, if an accused does not get acquitted, then the case enters upon defence through Sec. 23317 of the Cr. PC, 1973 which reads as –

*“Entering upon defence - (1) where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.*

* *Supra* Note: 3
* w.e.f April 1, 1974

15**Sec. 226 of Cr. PC, 1973 -** When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused

* **Sec. 232 of Cr. PC, 1973** - If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence; the judge shall record an order of acquittal.
* **Sec. 233 of Cr. PC, 1973**: (1) where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. (2) If the accused puts in any written statement, the Judge shall file it with the record. (3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.
* *If the accused puts in any written statement, the Judge shall file it with the record.*
* *If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.”*

It is clear from the above statement that Sec. 233 Clause (3) clearly states that if the defence wanted to produce any of document or thing the judge shall issue it unless he thinks that it should be refused on the grounds of vexation or delay. It is therefore contended that the juvenile was given the full right to produce any evidence on his behalf for determining his age and only when he was unable to do so the Sessions Court rejected his argument which is correct in law. Even under Section 233 Cr. PC, 1973 the accused can enter upon defence and he can apply for the issue of any process for compelling the attendance of any witness in his defence18. Here, the defence is given the opportunity to produce any such document or

evidence that would lead ultimately to his acquittal.

The Counsel further contends in accordance with Sec. 103 of Indian Evidence Act, 187219 that if a fact is known only to a person, the burden of proving the same lies in his hands only . Thus, it can be said the whole burden in the present case was upon Appellant No. 1 (i.e., David) to produce the evidence of his juvenility, provided he had substantial evidence for the same in the absence of which the Sessions Court goes on to reject his submission stating that

– *‘ there was insufficiency of evidence of age’20.*

A contention further arises that, under Section 7(A)21 of the JJ Act, 2000, it is upon the shoulders of the Juvenile Board Committee, to prove and satisfy any claim of juvenility of a person. But, in the case of ***Ashwani Kumar Saxena v. State of M.P.22***, the Hon’ble Court held that –

“*Once the court, following the above mentioned procedures, passes an order; that order shall be the conclusive proof of the age as regards such child or juvenile in conflict with*

* State of Madhya Pradesh v. Badri Yadav, 2006 Crim.L.J. 2128 at p. 2131 (SC)
* Act no. 1 of 1872
* Statement of Facts: Para- 11

*law. It has been made clear in subsection (5) or Rule 12 that no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof after referring to sub-rule (3) of the Rule 12. Further, Section*

*49 of the J.J. Act also draws a presumption of the age of the Juvenility on its determination.*”

This decision of the Hon’ble Court was complied with in the case of ***Mor Pal v. State23*** and also in the case of ***Jitendra Singh @Baboo Singh and Anr. V. State of U.P.24*** Also, in these cases, it was further contended by the Hon’ble Court that a hyper-technical method to find the age of a person should not be used25. Thus, relying on the above decisions of the Hon’ble Court the counsel submits that the conduct of the Sessions Court does not reflect any abuse of the process of law in the later stage of the trial relating to the juvenile i.e., in the Sessions Court and further that the sessions court has also not caused any abuse of power or illegality in rejecting the submission by the Appellant No. 1 (i.e., David).

* **PETITION BEFORE THE HIGH COURT:**

The Counsel most humbly submits that there was no mistake in judgment at the HC in dismissing the petition filed by the Appellant No. 1 under Sec. 482 of Cr. PC, 1973 seeking the remanding back of the case to the Juvenile Board Committee on the bases that the Session

* **Sec. 7(A), JJ Act, 2001 -** (1) Whenever a claim of juvenility is raised before any court or a court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be: Provided that a claim of juvenility may be raised before any court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act. (2) If the court finds a person to be juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence if any, passed by a court shall be deemed to have no effect.

22 (2012) 9 S.C.C. 750

23 (2013) 198 D.L.T. 487

24 (2013) 3 R.C.R. (Cri.) 819

* Babloo Parsi v. State of Jharkhand and Anr., A.I.R. 2009 S.C. 314

court has no jurisdiction to try the case and therefore causing the abuse of power Sec. 482 of the Cr. PC, 1973 talks about the inherent powers of the High Court, which is stated as –

*“Sec. 482 of Cr. P C, 1973 – Saving of Inherent Powers of High Court*

*Nothing in this code shall be deemed to limit or affect the inherent powers of the high court to make such orders as may be necessary to give effect to any order under this code or to prevent abuse of the process of any court or otherwise to secure the ends of justice26.”*

It is contended that under Sec. 48227 of the Cr. PC, 1973 HC has the right to exercise its inherent power, through which it has decided to here the petition of Appellant No. 1 (David). The scope of the inherent power under Sec. 48228 of the Cr. PC, 1973 is extremely vast and has to be exercised very sparingly by the High Court, only in the rarest of the rare situation, the section envisages only three circumstances29 under which the inherent jurisdiction may be exercised, namely,

* To give effect to an order under the code
* To prevent abuse of process of court
* To otherwise secure the ends of justice

It is further contended that in the present case, there is question regarding ‘to prevent abuse of process of court’. It can be safely contended that there was no abuse of power by any lower court as observed and proved in premise ‘1’ and ‘2’ thus the inherent power of HC cannot be exercised in the present case.

The High Court in its decision dismissed the petition, on the grounds that Appellant No. 1 was Capax of committing the offence and that the conduct of the Appellant reﬂects his

* K. K. Iyengar, Commentary On The Code Of Criminal Procedure, 1973 ,1 at 1623 (2nd ed. 2011)

27Sec. 482, Cr. P.C., 1973: Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

* *Id.*
* K. K. Iyengar, Commentary On The Code Of Criminal Procedure, 1973, 1 at 1625 (2nd ed. 2011)

intention to commit the crime. The Hon’ble court in the case of ***Partap Singh* v. *State of***

***H.P.30*** held that under Section 482 of the Cr. PC, 1973 –

“*it is equally well settled that the powers under Section 482, Code of Criminal Procedure, are distinct from the appellate or revisional powers of the court and in the exercise of such powers the High Court cannot make a reappraisal of evidence and to come to a conclusion different from the one arrived at by the court below, unless there are compelling circumstances choking the conscience of the court.*”

The same view was taken by the Hon’ble Court in the case of ***State of Bihar* v. *Rajendra Agrawalla31*** and the Hon’ble court further held that –

*“It is not open for the court either to shift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out.”*

In the case of ***Mrs. Rupan Deal Bajaj and Anr.* v. *Kanwar Pal Singh Gill and Anr.32*** the Hon’ble court held that –

“…at that stage it is not the function of the Court to weigh the pros and cons of the prosecution case or to consider necessity of strict compliance of the provisions which are considered mandatory and its effect of non-compliance. It would be done after the trial is concluded. The Court has to prima facie consider from the averments in the charge-sheet and the statements of witnesses on the record in support thereof whether court could take cognizance of the offence, on that evidence and proceed further with the trial. If it reaches a conclusion that no cognizable offence is made out no further act could be done except to quash the charge sheet. But only in exceptional cases, i.e. in rarest of rare cases of mala fide initiation of the proceedings to wreak private vengeance process original is availed of in laying a complaint or FIR itself does not disclose at all any cognizable offence - the Court may embark upon the consideration thereof and exercise the power.

In the case of **State of Bihar v. Murad Ali Khan33** the Hon’ble court held that-

“the jurisdiction Under Sec. 482 of Cr. PC, 1973 has to be exercised sparingly and with circumspection and in the judgment it has also given the working that in exercising the jurisdiction under the aforementioned section, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.”

It submitted to the Hon’ble court that relying on the above judgments the HC, did not reappraise any evidence and facts, and based on the available evidences dismissed the petition of Appellant No. 1 (i.e., David) , which was correct in law and thus, no abuse of power was caused by the HC in dismissing the petition of the appellant.

It is further submitted to the Hon’ble court that the case of Appellant No. 1 (i.e., David) should not be remanded back to the Juvenile Board Committee as there was no abuse of power by the judicial as well as quasi judicial bodies and also that the appellant has not made the proper use of the mentioned laws governing these bodies. Hence, the case of appellant should not be remanded back to the Juvenile Board Committee.

**2. WHETHER THE SAID DEATH CAN BE TERMED AS CULPBALE HOMICIDE OR NOT**?

The counsel most humbly submits before the Hon’ble Court that the punishment of Appellant No. 2 (i.e., Ujwal Purohit) should not be suspended. It is contended that in the present case, the punishment awarded to Appellant No. 2, (i.e., Ujwal Purohit) is justified in law, which is evident from the acts committed by him, before and after the commission of crime. The appellant has been charged along with Appellant No. 1 (i.e., David) U/s 30434 / 32635 read 33 1989 Crim.L.J. 1005

34**Section 304, IPC 1860:** Punishment for culpable homicide not amounting to murder: Whoever commits culpable homicide not amounting to murder, shall be punished with [imprisonment f or life], or imprisonment of either description f or a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description f or a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

35**Section 326, IPC, 1860:** Voluntarily causing grievous hurt by dangerous weapons or means: Whoever, except in the case provided f or by Section 335, voluntarily causes grievous hurt by means

with Sec. 3436 of the IPC, 1860. The counsel further contends that the decision taken by Juvenile Board Committee in awarding the punishment to Appellant No. 2 U/s 30437 / 32638 read with Sec. 3439 of the IPC, 1860 and sending him to the remand home for a period of one and a half years40 is justified in law and is legally valid. Since the ingredients of ‘*Common Intention*’41 can be inferred in the present case.

The Counsel seeks attention of the Hon’ble Court on the facts of the case on the basis of which the pre-requisites of common intention can be derived in the present case, “*In the exhibition Ujwal Purohit had a quibble with a child of his peer named Mohan (son of a well known businessman) as both of them wanted to buy the same toy gun. When the quibble turned into a quarrel and eventually into a Fight, David accompanied Ujwal Purohit and took an iron rod and aggressively strike it on the head of Mohan, resulting which boy got fainted”, also, “Ujwal Purohit understanding the circumstances ﬂed from that place immediately”.*

It is contended that the proof for common intention in the present case is seldom available. It has to be derived from the facts of the case, surrounding circumstances and conduct of the

of any instrument f or shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of f ire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with [imprisonment f or life], or with imprisonment of either description f or a term which may extend to ten years, and shall also be liable to fine.

* **Section 34, IPC, 1860:** Acts done by several persons in furtherance of common intention.--When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.
* *Supra* Note 33
* *Supra* Note 34
* *Supra* Note 35
* Statement of Facts: Para 12
* *Supra* Note 3

accused after the commission of crime. The Hon’ble court in the case of ***Krishnan* v. *State42***

held that –

“*The applicability of Sec. 34 is dependent on the facts and circumstances of each case. No hard-and-fast rule can be made out regarding applicability or non- applicability of Sec. 34.*”

Similarly, the Hon’ble court in the case of ***Girja Shankar* v. *State of U.P*.43** held that –

“*Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true concept of Section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.*”

Thus relying on the above judgments it is contended that the proof of common intention is seldom available in the present case which can be derived on the basis of direct as well as circumstantial evidences regarding role of Appellant No.2, before and after the commission of the crime and thus, it can be said that Appellant no. 2 (i.e., Ujwal Purohit) along with Appellant No. 1 had a common intention to grievously hurt Mohan as a consequence of

42 (2003) 7 S.C.C. (Cri) 1577

43 (2004) 3 S.C.C. 793: 2004 S.C.C. (Cri) 863

which his death was caused. It is clearly mentioned in the fact sheet that the Appellant No. 1 (i.e., Ujwal Purohit) was accompanied by the Appellant no. 1 and also it is clear from the fact sheet that after the commission of crime the Appellant no. 2 (i.e., Ujwal Purohit) understanding the circumstances fled from that place immediately. Thus it is safe to contend that the conduct of the appellant after the commission of crime show his mental intent in committing the crime by accompanying Appellant no. 1(i.e., David).

It is further contended that the Hon’ble Court in the case of ***Jai Bhagwan* v. *State of Haryana44*** , laid down certain principles for the application of Sec. 3445of the IPC, 1860 and held that –

“*To apply Section 34, of IPC, 1860 apart from the fact that there should be two or more accused, two factors must be established: (i) common intention and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability…*”46

Similarly, the Hon’ble court in the case of ***Suresh* v. *State of U.P.47***, held that-

“*to attract section 34 IPC two postulates are indispensible: (1)The criminal act(consisting of a series of acts) should have been done, not by one person, but more than one person; (2) Doing of every such individual act cumulatively resulting in the commission of criminal offence should have been in furtherance of the common intention of all such persons*”

The Hon’ble Court further in the case of ***Sachin* v. *State48***, held that –

44 (1999) 3 S.C.C. 102

* *Supra* Note 33
* Darshan Singh v. State of Punjab (2010)3 S.C.C. (Cri) 266: (2009)16 S.C.C. 290

47 (2001) 3 S.C.C. 673: 2001 S.C.C. (Cri) 601

48 (2008) 3 S.C.C. 390

*“*Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.”

Thus, relying on the above cases of the Hon’ble court it is contended that the sole purpose of Sec. 34 of IPC, 1860 is to decide the degree of liability of each person involved in the act. This section is just a rule of evidence but does not create any substantive offence49. It can also be contended that in the present case the participation of the appellant no. 2 can be implied from the direct and circumstantial evidences from the facts. And also that no overt act was done by the appellant even though the Sec. 34 of IPC, 1860 can be invoked.

In the case of **Ashok Kumar v. State of Punjab50**, the Hon’ble Court held that-

“The existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.”

49 Goudappa v. State of Karnataka: (2013)2 S.C.C. (Cri) 8: (2013)3 S.C.C. 675

50 1977 Crim.L.J. 164

The Counsel seeks the attention of the Hon’ble Court on the facts of the case, to find that that the original situation of fight occurred when, now deceased, Mohan and Ujwal Purohit indulged in a quibble with each other for buying a toy gun in the exhibition. The fact sheet clearly shows that heated arguments between them was showing progression, i.e., the fight between them started with a “quibble”, turned into “quarrel” and then eventually in “fight”51. It was pertaining to this fight that Appellant Number-1 (i.e., David), hits Mohan aggressively with an iron rod. In the present case also though the act of Ujwal Purohit may not be clearly visible or is not identically similar to that of the Appellant No. 1 as intending to cause death, but when coupled with the surrounding incidents, it is evident that both David and Ujwal Purohit shared the common intention of causing grievous hurt to Mohan, it can also be contended that the of appellant (i.e., Ujwal Purohit) fled from the place of incident which also shows his mental intent to commit the crime in consonance with the mental intent of the Appellant No. 1 (i.e., David). Thus, the conduct of Ujwal Purohit satisfies the above mentioned clauses through:

* The commission of the criminal act: Contended through his role as initiator of the quibble between him and the deceased Mohan, and also, letting the quibble move in progression from ‘quibble’ to ‘quarrel’ to ultimately ‘fight’, in the course of which the main incident of David attacking Mohan occurred.
* Doing of such an act in furtherance of a common intention: between more than one

person, i.e., him and David, with the intention to cause certain bodily injury to Mohan, though their acts were not identically same.

* Omission in stopping an unlawful act committed in his company: abiding by the case of ***Vaijayanti* v. *State of Maharashtra52*** it was held that- “*even an omission on his part to do something may attract the said provision*.” Thus, Ujwal not stopping David from hurting Mohan also constitutes his liability.

51 **Meaning of Fight:** take part in a violent struggle involving physical force or weapons. (Catherine Soanes and Angus Stevenson, Concise Oxford English Dictionary, (11th ed., 2004)

52 (2005)13 SCC 134: (2006)1 SCC (Cri) 790

Further it is contended that the Hon’ble Court in the case of ***Gopi Nath* v. *State53*** and ***Nandu***

**v. *State54*** held that-

*“*even doing separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention; render each of such persons liable for the result of them all, as if he had done them by himself.”55

Thus, the act committed by Ujwal Purohit may not be the same as that of David, but they are of a similar nature. The term “fight” as mentioned in the factsheet means to, “takes part in a violent struggle involving the exchange of physical blows or the use of weapons56. Thus, the conflict between Mohan and Ujwal Purohit was at an advanced state and according to the meaning of ‘fight’, the use of physical force, makes sure that Mohan was most likely to be hurt by the account of events, though it was David’s act that ultimately leads to his death.

This factor of existence of a plan is evident in the definition of Sec.3457, in the IPC, 1860. The definition uses the phrase, “*in futherance of common intention*”. The meaning of the term ‘*furtherance*’ is ‘*action of helping forward*’58. On this definition the Hon’ble court in the case of ***Shankarlal Karcharbhai* v. *State*** 59and ***Parasa Raja v. State60*** held that –

“it indicates some kind of aid and assistance producing an effect on future. Any act may be regarded as done in furtherance of the ultimate felony if it is a step

53 (2001) 6 S.C.C. 620

54 (2002) 8 S.C.C. 9

* S.P. Sen Gupta, Sarkar & Justice Khastigir on Indian Penal Code, 1860, 3rd Edition 1 at 127 (3 rd ed., 2015)
* *Supra* Note 49
* *Supra* Note 33
* Oxford English Dictionary

59 A.I.R. 1965 S.C. 1260

60 (2003) 12 S.C.C. 306: A.I.R. 2004 SC 132: 2004 CrLJ 390

*intentionally taken, for the purpose of ‘effecting felony’*”61 Similar view was held in the cases of .

Thus, the Counsel humbly submits that Appellant Number-2’s act of indulging in a progressive quibble, quarrel and fight was a step towards the action of committing of the ultimate offence by Appellant Number-1. Also, the appellant no. 2 did not stop the appellant from committing the act. Thus, it is clear from the aforementioned case that there was common intention between both the appellants while committing the crime.

In the case of ***Dani Singh* v. *State62***, the Hon’ble court held that-

Thus, relying on the above mentioned case it is contended that a pre-concerted plan is a necessary to hold Sec. 34 of IPC, 1860 applicable. But the planning or meeting of mind can happen in a spur of movement which is evident from the fact sheet that it was so in the present case. In the case of ***Dharampal* v. *State*** 63 and ***Anand* v. *State64*** the Hon’ble court held that intention to commit a crime may develop on the spot and it is not necessary that there must be some time-lag between the formation of common intention and the actual commission of the offence in furtherance of such common intention.

Also, in the case of ***Joginder* v. *State65*** the Hon’ble Court held that-

61 Russel on Crime, 12th Edn. Vol I.pp.487 and 488

62 (2004)13 S.C.C. 203: A.I.R. 2004 SC 4570: 2004 CrLJ 3238

63 A.I.R. 1978 SC 1942: 1978 CrLJ 171

64 A.I.R. 1966 SC 148: 1966 CrLJ 171

65 1994 CrLJ 134 (SC)

“*The totality of the circumstances must be taken into consideration. The pre- arranged plan may develop on the spot.*”66

The Counsel further contends that even in the present case the acts of Ujwal Purohit was a step taken intentionally by him to attain the ultimate felony of causing grave injury to Mohan. The factor of planning or meeting of minds is evident67 from the fact sheet which says, “… David accompanied Ujwal Purohit and took an iron rod and aggressively strike it on the head of Mohan, resulting which boy got fainted”68. The term ‘accompanied69’ is a transitive verb which means, ‘to go along with’ or ‘complement’ someone or something. Thus, the contention held before the Hon’ble Court, planning can easily be derived from acts of the Appellants under Sec. 34 of the IPC, 1860. Since the act of Appellant Number-1(i.e., David) in getting into a fit of aggression and hitting Mohan was so proximate to the act of Appellant No. 2 (i.e., Ujwal Purohit) of getting involved in a ‘fight’ which in itself means involvement of violence and aggression70, that both the acts can be correlated71 and thus it could be concluded that there was common intention among both the appellants to commit the crime.

It is contended that in the case of ***Pradeep Kumar* v. *Union of Admn72*** the Hon’ble court talks about the course of events which took place due to accused after the act was committed. The Counsel seeks attention of the Hon’ble Court towards the fact that, Appellant Number-2, after the commission of offence by Appellant Number 1, “*understanding the circumstances ﬂed from that place immediately.*”73 Thus, the conduct of Appellant Number- 2 after the occurring of the offence highlights the presence of guilt in his mind.

66 Magsodan v. State of U.P.: A.I.R. 1988 SC 126

67 Bhagwan v. State: (1978) 1 S.C.C. 214: 1978 Crim.L.J. 153

* Factsheet para. 5
* Catherine Soanes & Angus Stevenson, Concise Oxford English Dictionary(11th Edition, 2004)
* *Supra* Note: 25
* Abdul Bari v. State of West Bengal: 1984 CrLJ 201(Cal)

72 (2006) 10 S.C.C. 608: A.I.R. 2006 SC 2992: 2006 Crim.L.J. 3894

The Counsel submits before the Hon’ble Court that considering all the above authorities cited and the contentions made in consonance with these authorities, the circumstantial evidence, undoubtedly points towards Appellant Number-2 (i.e., Ujwal Purohit) that he had the common intention, as defined under Sec. 34 of the IPC, 1860 along with Appellant Number-1 (i.e., David) to voluntarily cause grievous hurt to the now deceased Mohan which led to the death of Mohan.

**PRAYER**

Wherefore, in the light of the facts presented, issues raised, arguments advanced and authorities cited, the Respondents humbly submits that the Hon’ble Court be pleased to adjudge and declare that:

* The case of Appellant No. 1 (i.e., David) should not be remanded back to the Juvenile Board Committee.
* The punishment of the Appellant no. 2 (i.e., Ujwal Purohit) should not be suspended.

And pass any other relief, that this Hon’ble Court may deem fit and proper in the interest of justice, equity and good conscience.

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

Sd. /- (Counsel for the Respondents)

73 Statement of Facts; Para-6