

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeals No. 202 & 203 of 2012

Reserved on: 01.04.2026

Date of Decision: 15.06.2026.

1. Cr. Appeal No. 202 of 2012

Nawal Thakur

...Appellant

Versus

State of Himachal Pradesh

...Respondent

2. Cr. Appeal No. 203 of 2012

Naresh @ Chhottu

...Appellant

Versus

State of Himachal Pradesh

...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?¹ yes

For the Appellants	:	Mr Ajay Chandel, Advocate, for the appellant in Cr. Appeal No.202 of 2012 Mr Dushyant Dadwal, Advocate, for the appellant in Cr. Appeal No.203 of 2012
For Respondents/State		Mr. Jitender K. Sharma, Additional Advocate General, in both the appeals.

Rakesh Kainthla, Judge:-

The present appeals are directed against the judgment of conviction dated 02nd May 2012 and order of sentence dated 14th May

2012 passed by learned Sessions Judge Kullu (learned trial Court). (*The parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience*).

2. Briefly stated, the facts giving rise to the present appeal are that the police presented a challan against the accused for the commission of offences punishable under Sections 307, 326, 324, 504, 506, 147, 148 and 149 of the Indian Penal Code (IPC) and Section 25 of the Arms Act. It was asserted that the informant, Tulsi Ram (PW-1), was present at Bajaura Chowk on 01.11.2008 on his motorcycle bearing registration number HP34-6457. Some boys were walking on the road at about 2:30 p.m. The informant pressed the horn to signal them to move; however, the boys started abusing him. Naresh alias Chottu and Nawal Thakur attacked the informant. Naresh was armed with a 'khukhri', and he inflicted injury on the informant's head. Surajmani (PW-15) and Kishan Chand (PW-18) rescued the informant from the accused. The informant was taken to the hospital for treatment. An intimation was given to the police. The police recorded an entry in the daily diary (Ext.PW10/A) and directed ASI Kishan Chand (PW-18) and HHG Mehar Chand to verify the correctness of the information. ASI Kishan Chand (PW-18) filed an application (Ext.PW 13/C) for obtaining the opinion of the doctor regarding the fitness of the injured to make

the statement. Doctor Rakesh Mohan Gautam (PW-13) examined the patient and opined that the patient was fit to make the statement. ASI Kishan Chand (PW-18) recorded the statement of Tulsi Ram (Ext.PW1/A) and sent it to the police station, where an FIR (Ext. PW9/A) was registered. Doctor Rakesh Mohan Gautam examined the injured Tulsi Ram and found that he had sustained multiple injuries that could have been caused by means of a sharp-edged weapon like a khukhri (Ext. P2). He issued the MLC (Ext.PW13/B). Doctor Rakesh Mohan Gautam also examined Surajmani and found that he had sustained a small incised wound on the underside of the ventral aspect of the wrist, which could have been caused by means of a khukhri (Ext.P2). He issued MLC (Ext.PW13/D). ASI Kishan Chand (PW 18) arrested the accused Naresh Kumar and Nawal Kishore. He visited the spot and prepared the site plan (Ext.PW18/B). He took the photographs (Ext.PW18/C1 and Ext. PW18/C2), whose negatives are Ext. PW18/C3 and Ext.PW18/C4. Kishan Chand (PW-2) produced a 'khukhri'. ASI Kishan Chand (PW-18) prepared the sketch of the 'khukhri' (Ext. PW3/A) and seized it vide memo (Ext.PW2/A) after sealing it in a parcel with seal T. ASI Kishan Chand (PW-18) obtained the school certificates of Manohar Lal and Sandeep, and they were found to be minors. Sample seal T (Ext.PW 18/H) was taken on a separate piece of cloth. An application

(Ext.PW14/A) was filed for obtaining the prosecution sanction, and a prosecution sanction (Ext. PW 14/B) was issued. The case property was sent to the State Forensic Science Laboratory (SFSL) for analysis, and the report (Ext.PW 12/A) was issued showing that human blood of group O was found on the shirt of Tulsi Ram, and a blood sample of Tulsi Ram. Human blood was found on the trousers and vest of Tulsi Ram, but the results were inconclusive in respect of the blood group. The statements of witnesses were recorded as per their version, and after the completion of the investigation, the challan was prepared and presented before the learned Chief Judicial Magistrate, Lahul & Spiti at Kullu, who committed it to the Court of Sessions (learned trial Court).

3. Learned trial Court found sufficient reasons to frame charges against the accused for the commission of offences punishable under Sections 147, 148, 307, 326, 324, 506 and 504 of IPC and against the accused Naresh for the commission of offences punishable under Sections 147, 148, 307, 326, 324, 506 and 504 of IPC and Section 25 of the Arms Act, to which, the accused pleaded not guilty and claimed to be tried.

4. The prosecution examined 18 witnesses to prove its case. Tulsi Ram (PW1) is the informant/injured. Kishan Chand (PW2) and

Surajmani (PW-15) are the eyewitnesses. Hari Singh (PW-3) did not support the prosecution's case. Mine Ram (PW-4) witnessed the recovery of the Matriculation Certificate. Constable Deep Chand (PW-5) carried the case property to FSL Junga. HC Kartar Singh (PW-6) was working as MHC, with whom the case property was deposited. ASI Chaman Lal (PW-7) is a witness to the handing over of the khukhri to Kishan Chand by MHC. Kishan Chand (PW-8) carried the injured to the hospital. ASI Yashwant Singh (PW-9) signed the FIR. Constable Lal Singh (PW-10) proved the entries in the daily diary. Sushil Sharma (PW-11) witnessed the recovery. SI Narain Singh (PW-12) prepared the challan. Dr Rakesh Mohan (PW-13) examined the injured. Om Prakash (PW-14) proved the prosecution sanction. SI Narain Singh (PW-16) prepared the supplementary challan. ASI Kishan Chand (PW-18) investigated the matter.

5. The accused, in their statements recorded under Section 313 of the Code of Criminal Procedure (Cr.PC), denied the prosecution's case in its entirety. Accused Naresh stated that the informant and his relatives gave him beatings, for which an FIR was registered at Police Station Aut. Accused Kamal Kishore stated that he was innocent and was falsely implicated on the basis of suspicion. Accused Nawal Thakur stated that the informant and his relatives had given him beatings at

Chowk. An FIR was lodged regarding this incident. Statement of Khem Chand (DW1) was recorded in defence.

6. The learned trial Court held that the testimony of the informant was corroborated by the statement of Surajmani. The informant and Surajmani had sustained injuries in the incident, and their testimonies were entitled to a great weight. The medical Officer had found the injuries on the vital part of the body. No charges were framed against the accused for the commission of any offence read with Section 34 of the IPC; however, the Court had jurisdiction to alter the charge from Section 149 of the IPC to Section 34 of the IPC. The defence version that the informant had given beatings to the accused was not proved. Non-examination of the independent witnesses was not material. The accused did not produce any license to possess a khukhri, hence the learned trial Court convicted the accused and sentenced them as under:-

Sections

307 IPC

Sentences

The accused Naresh Kumar was sentenced to undergo simple imprisonment for three years, pay a fine of Rs.5000/- and, in default of payment of fine, further undergo simple imprisonment for one month.

324 of IPC

The accused Naresh Kumar was sentenced to undergo simple imprisonment for one year, pay a fine of Rs.1000/- and in default of payment of the fine, further undergo simple imprisonment for one month.

25 of the Arms Act

The accused Naresh Kumar was sentenced to undergo simple imprisonment for six months, pay a fine of Rs.500/- and in default of payment of the fine, further undergo simple imprisonment for one month .

Accused Nawal Thakur was also sentenced under Section 307 of the IPC

The accused Nawal Thakur was sentenced to undergo simple imprisonment for three years, pay a fine of Rs.5000/- and in default of payment of fine, further undergo simple imprisonment for one month.

324 of IPC

The accused Nawal Thakur was sentenced to undergo simple imprisonment for one year, pay a fine of Rs.1000/- and in default of payment of the fine, further undergo simple imprisonment for one month.

All the substantive sentences were ordered to run concurrently.

7. Being aggrieved by the judgment and order passed by the learned trial Court, the accused have filed the present appeals.

8. I have heard Mr Ajay Chandel, learned Counsel for the appellant, Nawal Thakur and Mr Dushyant Dadwal, learned counsel for the appellant Naresh and Mr Jitender K Sharma, learned Additional Advocate General for the respondent/State.

9. Mr Ajay Chandel, learned Counsel for the appellant Nawal Thakur, submitted that the learned trial Court erred in appreciating the evidence on record. There are major contradictions in the statements of the witnesses, which made the prosecution's case highly doubtful. The victim/informant had materially improved upon his earlier version, which made his testimony in the Court suspect. The name of the appellant/accused, Nawal Thakur, was not mentioned in the FIR, and the possibility of his false implication cannot be ruled out. No charges were framed for the commission of offences read with Section 34 of the IPC, and the learned trial Court erred in invoking Section 34 of the IPC. The benefit of the Probation of Offender's Act was not extended to the accused. Hence, it was prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

10. Mr Dushyant Dadwal, learned counsel for the appellant/accused Naresh Kumar, adopted the submission of Mr Ajay Chandel and submitted that the defence version that the informant party had given beatings to the accused was highly probable. As per the prosecution, the accused were returning from the school, and no student is permitted to keep a 'khukhri' with him in the school. The witnesses to the recovery of the 'khukhri' have not supported the prosecution's case. The incident had taken place in a busy locality, and only two persons were examined. The injured were not taken to the government hospital and were examined in a private hospital. No reason was assigned for not taking the injured to the government Hospital. Hence, he prayed that the present appeal be allowed and the judgment and order passed by the learned trial Court be set aside.

11. Mr Jitender K. Sharma, learned Additional Advocate General for the respondent/State, submitted that the informant and eye-witness Surajmani had sustained injuries in the incident, which established their presence on the spot. Learned trial Court had rightly held that the testimonies of the injured witnesses were entitled to a great weight. The statement of the informant was corroborated by the medical evidence. Minor contradictions in the statements of the witnesses are not material because the witnesses were examined after

the lapse of a considerable period, and minor contradictions were bound to come with time. The learned trial Court had rightly appreciated the evidence, and the judgment and order passed by the learned trial Court do not require any interference from this Court. Hence, it was prayed that the present appeal be dismissed.

12. I have given a considerable thought to the submissions made at the Bar and have gone through the records carefully.

13. The injured Tulsi Ram (PW-1) stated that he was returning from the Clinic of N.K Sharma on 01.11.2008 with his nephews on a motorcycle bearing registration number HP-34-6457. Some school boys were walking on the road. He blew the horn. The boys started abusing him. He enquired from the boys the reason for the abuse. The accused gave him beatings. Nawal caught hold of him, and Naresh attacked him with a khukhri on his head. Surajmani and Kishan Singh rescued him. Surajmani also sustained injuries while rescuing him. The accused threatened to do away with his life. He was shifted to SR hospital, Kalehli, in an Auto for medical treatment. He stated in his cross-examination that he was running a shop at Bajaura for 5 to 6 years, and all the shopkeepers at Bajaura were known to him. He admitted that many students of the Senior Secondary School Bajaura

were present on the spot, who were in uniform. He admitted that there were many shops at Bajaura Chowk. He had not disclosed the specific words used by the accused against him. He had not told the police that Nawal Thakur had caught hold of him, and the accused Naresh attacked him with a 'khukhri'. He admitted that Kishan and Surajmani were related to him, and they were running shops at Bajaura. Accused Naresh and Nawal Thakur were known to him before the incident. The incident continued for 5-10 minutes. He became unconscious and did not know who had called the police. He denied that Kishan Chand and Surajmani gave beatings to Naresh at Jhiri. He had mentioned the names of Naresh and Nawal Thakur in the statement (Ext.Pw1/A), which was recorded on the date of the incident.

14. The narration of the events in the statement (Ext.PW1/A) and in the Court is similar. Therefore, his statement is corroborated by his previous statement (Ext. PW1/A).

15. It was suggested to this witness that he, Kishan Chand and Surajmani had given beatings to the accused Naresh and Nawal. The accused Naresh and Kamal Kishore also stated in their statements recorded under Section 313 of the CrPC that they were beaten. The

defence also proved the FIR (Ext. PW9/A); therefore, the presence of informant, Kishan Chand, Suraj Mani, and the accused is not in dispute.

16. Kishan Chand (Pw-2) stated that a scuffle had taken place on 01.11.2008 with Tulsi Ram. Nawal had caught hold of the informant, and Naresh inflicted a blow of a khukhri on the informant's head. He and other persons intervened, and the accused left 'Khukhri' on the spot. Surajmani was also present on the spot. He had called for an auto and carried the injured to the hospital. He stated in his cross-examination that one auto was parked near the spot, and the injured person was shifted to the hospital in that auto. He had seen the scuffle between the informant and the accused. The informant and the accused were standing in the centre of the road at the time of the scuffle. He knew accused Naresh and Nawal Thakur since they used to visit his shop frequently. He had told the police that the 'khukhri' was lying on the spot and he had picked it up. He denied that no incident had taken place, and a false FIR was lodged against the accused.

17. Kishan Chand (Pw-8) stated that he was standing at Bajaura Chowk on 01.11.2008, he was called by a person, and he shifted an injured person along with four other persons to the SR hospital. Kishan Chand paid the auto fare. He stated in his cross-examination

that he used to park his auto at the gate of Rest House, Bajaura. He admitted that the place of the incident was located at a distance of 200 -300 meters from the gate of the Rest House.

18. There is nothing in the cross-examination of this witness to show that he is making a false statement. His testimony substantially corroborates the statement of the informant and Kishan Chand in material particulars.

19. Suraj Mani (Pw -15) also supported the prosecution's case. He stated that he had gone to Bajaura on 01.11.2008. The informant, Tulsi Ram, was riding the bike with two children at about 2:30 p.m. Five students had an altercation with Tulsi Ram. Those students were moving ahead, and the informant had blown the horn. The students abused the informant. They also attacked the informant. Nawal caught hold of the informant Tulsi Ram and accused Naresh attacked the informant with the khukhri. He stated in his cross-examination that he was running a shop of Chinese food near the school at a distance of 150 metres. He admitted that there are many shops and residential houses near the place of the incident. He admitted that Pradhan of Gram Panchayat Bajaura was residing near the place of the incident. The police were already present in the hospital before his arrival. He was

going to his shop at the time of the incident. He denied that he was making a false statement because of a relationship with the informant.

20. Doctor Rakesh Mohan Gautam (PW-13) examined Tulsi Ram. He found a 10 cm long, deep, sharp wound cutting through both tables of skull bone fragments impregnated on dura on right parietal area of the scalp, and a 5 cm long wound cutting through the bony skull. These injuries were dangerous to life and could have been caused by means of a khukhri (Ext.P2) shown to him.

21. Dr Rakesh Mohan Gautam had also examined Suraj Mani and found a small, incised wound 1 cm in size on the ulnar side, ventral aspect of the wrist. These injuries could also have been caused by means of a khukhri. He stated in his cross-examination that the patient was brought at about 4:00 p.m., and the police arrived at about 7:00 p.m. The injured regained consciousness after the operation when he was shifted to the Ward. The case history was not shown to him by anybody. He admitted that injuries can be caused by striking a sharp-edged weapon.

22. The statement of this witness duly establishes that the informant and Surajmani had sustained injuries which could have been caused by means of a sharp-edged weapon like a khukhri. He admitted

in his cross-examination that the injury noticed by him could also have been caused by striking against some sharp-edged object. However, that is an alternative hypothesis and will not make the prosecution's case suspect. It was laid down by the Hon'ble Supreme Court in *Ramakant Rai v. Madan Rai*, (2003) 12 SCC 395: 2003 SCC OnLine SC 1086, that when the testimonies of the witnesses are found credible, the medical evidence pointing to alternative possibilities is not sufficient to discard the prosecution's case. It was observed at page 404:

“22. It is trite that where the eyewitnesses' account is found credible and trustworthy, medical opinion pointing to alternative possibilities is not accepted as conclusive. Witnesses, as Bentham said, are the eyes and ears of justice. Hence, the importance and primacy of the quality of the trial process. Eyewitnesses' accounts would require a careful independent assessment and evaluation for their credibility, which should not be adversely prejudged, making any other evidence, including the medical evidence, the sole touchstone for the test of such credibility. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witnesses held to be creditworthy; consistency with the undisputed facts; the “credit” of the witnesses; their performance in the witness box; their power of observation, etc. Then the probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation.”

23. It was held by the Hon'ble Supreme Court in *Neeraj Sharma v. State of Chhattisgarh*, (2024) 3 SCC 125: 2024 SCC OnLine SC 13 that the testimony of the injured witness has to be accepted as correct unless there are compelling circumstances to doubt such a statement. It was observed:

“22. The importance of an injured witness in a criminal trial cannot be overstated. Unless there are compelling circumstances or evidence placed by the defence to doubt such a witness, this has to be accepted as extremely valuable evidence in a criminal trial.

23. In *Balu Sudam Khaldev.State of Maharashtra [Balu Sudam Khalde v.State of Maharashtra*, (2023) 13 SCC 365: 2023 SCC OnLine SC 355], this Court summed up the principles which are to be kept in mind when appreciating the evidence of an injured eyewitness. This Court held as follows: (SCC para 26)

“26. When the evidence of an injured eyewitness is to be appreciated, the under-noted legal principles enunciated by the Courts are required to be kept in mind:

26.1. The presence of an injured eyewitness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.

26.2. Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

26.3. *The evidence of the injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.*

26.4. The evidence of the injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

26.5. If there be any exaggeration or immaterial embellishment in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

26.6. The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with the passage of time should be discarded.” (emphasis supplied)

24. This position was reiterated in *Rajan v. State of Haryana*, 2025 SCC OnLine SC 1952, wherein it was observed:

“33. When the evidence of an injured eye-witness is to be appreciated, the undernoted legal principles enunciated by the Courts are required to be kept in mind:

“(a) *The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.*

(b) *Unless it is otherwise established by the evidence, it must be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.*

(c) The evidence of an injured witness has greater evidentiary value, and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of an injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.

(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of the injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration, and discrepancies which normally creep due to loss of memory with passage of time should be discarded.”

34. In assessing the value of the evidence of the eyewitnesses, two principal considerations are whether, in the circumstances of the case, it is possible to believe their presence at the scene of occurrence or in such situations as would make it possible for them to witness the facts deposed to by them and secondly, whether there is anything inherently improbable or unreliable in their evidence. In respect of both these considerations, circumstances either elicited from those witnesses themselves or established by other evidence tending to improbabilise their presence or to discredit the veracity of their statements, will have a bearing upon the value which a Court would attach to their evidence.

Although in cases where the plea of the accused is a mere denial yet the evidence of the prosecution witnesses has to be examined on its own merits, where the accused raise a definite plea or put forward a positive case which is inconsistent with that of the prosecution, the nature of such plea or case and the probabilities in respect of it will also have to be taken into account while assessing the value of the prosecution evidence. (See: *Balu Sudam Khaldev.State of Maharashtra:(2023) 13 SCC 365*).

25. It was laid down by the Hon'ble Supreme Court in *State of Punjab vs. Hari Singh 1974 (3) SCR 725* that a person speaking on oath should be presumed to be a truthful witness unless there is something inherently improbable in his testimony. It was observed:

“The ordinary presumption is that a witness speaking under an oath is truthful unless and until he is shown to be untruthful or unreliable in any particular respect. The High Court, reversing this approach, seems to us to have assumed that witnesses are untruthful unless it is proved that they are telling the truth. Witnesses, solemnly deposing on oath in the witness box during a trial upon a grave charge of murder, must be presumed to act with a full sense of responsibility for the consequences of what they state. It may be that what they say is so very unlikely or unnatural or unreasonable that it is safer not to act upon it or even to disbelieve them.”

26. Therefore, the testimonies of the injured witnesses are entitled to a great weight and cannot be discarded without any cogent reasons.

27. It was submitted that Kishan Chand (PW2) had produced the khukhri and the recovery was not effected from any of the accused; hence, the khukhri was not connected to the accused. This will not make any difference. Kishan Chand was present on the spot. He specifically stated that the accused had left the khukhri on the spot, and he had picked it up. Nothing was shown in the cross-examination of the witnesses that he was deposing falsely. His presence on the spot is duly established, and his testimony that khukhri was left on the spot, which was picked up by him, is acceptable.

28. It was submitted that Hari Singh (Pw-3) did not support the prosecution's case, and his testimony makes the recovery of the khukhri highly doubtful. This submission is not acceptable. Hari Singh admitted his signature on the memo (Ext. PW 2/A). Learned trial Court had rightly held that seizure witness turning hostile is not an uncommon phenomenon, and the prosecution's case cannot be doubted because the seizure witness has not supported the prosecution's version.

29. The khukhri was sent for analysis to the Forensic Science Laboratory (FSL), and traces of human blood were found on it, which shows that the khukhri was used as a weapon of offence. Therefore, the learned trial Court had rightly concluded that the khukhri was used as a weapon of offence in the present case.

30. Doctor Rakesh Mohan Gautam had found injuries cutting both tables of skull bones, and the fragments impregnated the dura mater on the right parietal area of the skull. He had also noticed a long wound cutting through the bony skull. His testimony shows that the injury was caused on the head, a vital part, by means of a khukhri, a sharp-edged weapon. The nature of the weapon used and the part of the body, where the injury was inflicted, can only lead to an inference that had the death been caused, the accused would have been liable for murder. The learned trial Court had rightly held that the prosecution had established its case for the commission of an offence punishable under Section 307 of the IPC.

31. The statement of the informant shows that the accused Nawal caught hold of him, and Naresh inflicted an injury by means of a khukhri on his head. This shows that both the accused were acting in concert. Therefore, they were acting in furtherance of their common

intention, and the learned trial Court had rightly held them liable by invoking Section 34 of the IPC.

32. The statements of Surajmani and Dr Rakesh Mohan Gautam show that Surajmani had sustained an incised wound on his hand that could have been caused by means of a khukhri. Therefore, Surajmani had sustained an injury by means of a sharp-edged weapon and the accused were rightly held guilty of the commission of offences punishable under Section 324 read with Section 34 of the IPC.

33. It was submitted that the learned trial Court had erred in invoking Section 34 of the IPC and discarding Section 149 of the IPC. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *Dhaneshwar Mahakud versus State of Orissa 2006 (9) SCC 307* that the accused can be convicted of the commission of an offence by invoking Section 34 of IPC when he has been charged with the commission of an offence punishable under Section 302 read with Section 149 of the IPC. It was observed at page 314:

“8. Before we consider the eyewitnesses' version of the incident and the medical evidence, we would like to venture upon the argument advanced by the counsel for the appellants that whether, in the absence of a charge under Section 34 IPC, the accused-appellants can be convicted with the aid thereof, when they were charged with an offence under Section 302 read with

Section 149 IPC only. To convict the accused of an independent charge under Section 302 IPC, it is necessary that the court should reach to the conclusion that the injuries inflicted by each individual taken in isolation were sufficient in the ordinary course of nature to cause the death of the deceased person. If the court reaches to the conclusion on the basis of the material placed before it that the injuries were sufficient in the ordinary course of nature to cause death and the nature of injuries was homicidal, the court can convict each and every accused under Section 302 IPC, but if the court cannot conclusively reach to the finding that each and every individual involved in commission of the offence has caused such injuries which are sufficient in the ordinary course of nature to cause death, the accused cannot be convicted under Section 302 IPC. If the injuries caused are sufficient in the ordinary course of nature and they have been caused in furtherance of the common intention, then each and every individual propagating the common intention can be convicted under Section 302 read with Section 34 IPC, although he has not been charged under Section 34 IPC and has been charged under Section 149 IPC along with Section 302 IPC.

10. Similarly, in *Chittarmal v. State of Rajasthan [(2003) 2 SCC 266: 2003 SCC (Cri) 514: AIR 2003 SC 796]* this Court has held as under: (SCC p. 273, para 14)

“14. It is well settled by a catena of decisions that Section 34, as well as Section 149, deals with liability for constructive criminality, i.e. vicarious liability of a person for acts of others. Both sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between

common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a prearranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention, then the substitution of Section 34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses the commission of an offence in furtherance of the common intention of them all. (See *Barendra Kumar Ghosh v. King Emperor* [(1924) 52 IA 40: AIR 1925 PC 1 : (1925) 26 Cri LJ 431], *Mannam Venkatadari v. State of A.P.* [(1971) 3 SCC 254: 1971 SCC (Cri) 479: AIR 1971 SC 1467], *Nethala Pothuraju v. State of A.P.* [(1992) 1 SCC 49: 1992 SCC (Cri) 20: AIR 1991 SC 2214] and *Ram Tahal v. State of U.P.* [(1972) 1 SCC 136: 1972 SCC (Cri) 80: AIR 1972 SC 254])”

[*Lachman Singh v. State* [(1952) 1 SCC 362: 1952 SCR 839: AIR 1952 SC 167: 1952 Cri LJ 863] (AIR para 13) and *Karnail Singh v. State of Punjab* [1954 SCR 904: AIR 1954 SC 204: 1954 Cri LJ 580] (AIR para 7) are two other cases on the same point.]

11. In *Hamlet v. State of Kerala* [(2003) 10 SCC 108] (SCC p. 116, para 17), this Court has held as follows:

“17. This Court in *Nethala Pothuraju v. State of A.P.* [(1992) 1 SCC 49: 1992 SCC (Cri) 20: AIR 1991 SC 2214] has held that the non-applicability of Section 149 IPC is no bar in convicting the accused under Section 302 read with Section 34 IPC if the evidence discloses the commission of an offence in furtherance of the common intention of such accused. This is because both Sections 149 and 34 IPC deal with a combination of persons who become liable to be punished as sharers in the commission of offences. Therefore, in cases where the prosecution is unable to prove the number of members of the unlawful assembly to be five or more, courts can convict the guilty persons with the aid of Section 34 IPC, provided that there is evidence on record to show that such accused shared the common intention to commit the crime. While doing so, the courts will have to bear in mind the requirement of Section 34. It is well known that to establish the common intention of several persons to attract Section 34 IPC, the following two fundamental facts have to be established: (i) common intention, and (ii) participation of the accused in the commission of the offences. If the above two ingredients are satisfied, even an overt act on the part of some of the persons sharing the common intention is not necessary.”

12. Recently in *Gurpreet Singh v. State of Punjab* [(2005) 12 SCC 615 : (2006) 1 SCC (Cri) 191] this Court has relied upon *Ramji Singh v. State of Bihar* [(2001) 9 SCC 528: 2002 SCC (Cri) 760] for the proposition that charges framed under simpliciter Section 302 can be changed to Section 302 read with Section 34 IPC. The relevant portion of the judgment in *Ramji Singh* case [(2001) 9 SCC 528: 2002 SCC (Cri) 760] is extracted below: (SCC pp. 533-34, paras 14-16)

“14. Legal position as to whether, in the absence of a charge under Section 34, a conviction could be maintained under Section 34 was cleared by the Constitution Bench in *Willie (William) Slaney v. State of M.P.* [(1955) 2 SCR 1140: AIR 1956 SC 116: 1956 Cri LJ 291] where this Court observed at para 86: (AIR p. 137)

‘86. Sections 34, 114 and 149 of the Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; “and the charge is a rolled-up one involving the direct liability and the constructive liability” without specifying who are directly liable and who are sought to be made constructively liable.

In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence, and such evidence is of course relevant.’

This was reiterated by the Supreme Court a number of times. We may refer to *Dhanna v. State of M.P.* [(1996) 10 SCC 79: 1996 SCC (Cri) 1192], where this position is reiterated after referring to the other cases. It held: (SCC pp. 82-83, para 9)

‘9. It is, therefore, open to the court to take recourse to Section 34 IPC even if the said section was not specifically mentioned in the charge, and instead Section 149 IPC has been included. Of course, a finding that the assailant concerned had a common intention with the other accused is necessary for resorting to such a course. This view was followed by this Court in later decisions also. (*Amar Singh v. State of Haryana* [(1974) 3 SCC 81: 1973 SCC (Cri) 789], *Bhoor Singh v. State of Punjab* [(1974) 4 SCC 754: 1974 SCC (Cri) 664] .) The first submission of the learned counsel for the appellant has no merit.’

Accordingly, it is held that even in the absence of the charge under Section 34, the conviction could be maintained by the courts below.

15. The counsel for the appellants could not show that any prejudice was caused to either of the accused persons because of the non-framing of a charge under Section 34.

16. It is true that the two injuries that proved to be fatal were not specifically attributed to either of the accused. The common intention can be formed on the spot. At times, it is difficult to get direct evidence of preconceived minds. The common intention can be gathered from the circumstances and the manner in which the assault is carried out. The manner in which the assault was carried out leaves no manner of doubt in our mind that the

appellants had come with the intention to kill the deceased. Their intention was not to cause injuries alone.”

13. It is apparent from the decisions rendered by this Court that there is no bar on conviction of the accused-appellants with the aid of Section 34 IPC in place of Section 149 IPC if there is evidence on record to show that such accused shared a common intention to commit the crime and no apparent injustice or prejudice is shown to have been caused by application of Section 34 IPC in place of Section 149.”

34. This position was reiterated in *Rohtas v. State of Haryana*, (2021) 19 SCC 465: 2020 SCC OnLine SC 1014, wherein it was observed at page 472:-

i) Framing of charge and its subsequent alteration

16. The primary attack on the judgment of the High Court by the learned counsel for the appellants is on a question of law, which, although it seems interesting at first, turns out to be superficial upon a deeper consideration. The oversight regarding Sections 148 and 149 IPC, as highlighted by the appellants, is indeed inescapable. Before the members of an “unlawful assembly” can be vicariously held guilty of an offence committed in furtherance of a common object, it is necessary to establish that not less than five persons, as mandatorily prescribed under Section 141, read with Section 149 IPC, had actually participated in the occurrence. It is not uncommon, as in the present facts, that although the number of accused is more than five at the time of charge-sheeting, owing to acquittals of some of them over the course of trial, the remaining number of accused falls below five. It may

be true in such cases, as rightly urged by the appellants, that the charge under Sections 148 and 149IPC would not survive.

17. This does not, however, imply that courts cannot alter the charge and seek the aid of Section 34IPC (if there is common intention), or that they cannot assess whether an accused independently satisfies the ingredients of a particular offence. Sections 211 to 224 CrPC, which deal with framing of charges in criminal trials, give significant flexibility to courts to alter and rectify the charges. The only controlling objective while deciding on alteration is whether the new charge would cause prejudice to the accused, say if he were to be taken by surprise or if the belated change would affect his defence strategy. [*Nallapareddy Sridhar Reddy v. State of A.P.*, (2020) 12 SCC 467 : (2020) 4 SCC (Cri) 162, paras 16–21] The emphasis of Chapter XVII CrPC is thus to give a full and proper opportunity to the defence but at the same time to ensure that justice is not defeated by mere technicalities. Similarly, Section 386CrPC bestows even upon the appellate court such wide powers to make amendments to the charges which may have been erroneously framed earlier. Furthermore, improper or non-framing of charge by itself is not a ground for acquittal under Section 464CrPC. It must necessarily be shown that failure of justice has been caused, in which case a retrial may be ordered. [*Kantilal Chandulal Mehta v. State of Maharashtra*, (1969) 3 SCC 166: 1970 SCC (Cri) 19]

18. The contention of the appellants to the contrary is nothing but hyper-technical. It deserves mention that the extracts of *Subran v. State of Kerala* [*Subran v. State of Kerala*, (1993) 3 SCC 32: 1993 SCC (Cri) 583] as relied upon by the appellants' counsel have been subsequently recalled and substituted by the Bench in

review jurisdiction. [*Subran v. State of Kerala*, (1993) 3 SCC 722: 1993 SCC (Cri) 989] The amended version makes clear that the acquittal in *Subran* [*Subran v. State of Kerala*, (1993) 3 SCC 32: 1993 SCC (Cri) 583] was not because of improper framing of charges but on facts. In that case, the injuries attributed to the accused failed to satisfy the necessary ingredients of the relevant provision when his role was assessed individually. Indeed, such is the right approach. Courts are free to weigh the evidence and determine whether an independent conviction is possible in case group prosecution under Section 149IPC fails.

19. In another case relied upon by the appellants, i.e. *Amar Singh v. State of Punjab* [*Amar Singh v. State of Punjab*, (1987) 1 SCC 679: 1987 SCC (Cri) 232], this Court in the penultimate paragraph notes that : (SCC p. 684, para 13)

“13. ... *Apart from the fact that the appellants cannot be convicted under Sections 148 and 149IPC, it is difficult to convict them on any charge on the basis of the evidence of PW 5.*” (emphasis supplied)

This shows that acquittal was based not merely upon failure by the prosecution to fulfil the requirements of Section 149IPC, but because, even independently, no substantive offence was found to have been committed.

20. In fact, the law on this point has continuously been delved into and reiterated by this Court from time to time. A three-Judge Bench of this Court in *Karnail Singh v. State of Punjab* [*Karnail Singh v. State of Punjab*, (1954) 1 SCC 104: AIR 1954 SC 204], held that : (AIR p. 207, para 7)

“7. ... It is true that there is substantial difference between the two sections but as observed by Lord

Sumner in *Barendra Kumar Ghosh v. King Emperor* [*Barendra Kumar Ghosh v. King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: ILR (1925) 52 Cal 197], they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject-matter of the charge under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not therefore to be permitted. *But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice, and in such cases the substitution of Section 34 for Section 149 must be held to be a formal matter.*” (emphasis supplied)

21. The above-extracted position of law was further concretised in *Willie (William) Slaney v. State of M.P.* [*Willie (William) Slaney v. State of M.P.*, 1955 SCC OnLine SC 34: AIR 1956 SC 116, para 49] and by the majority in *Chittarmal v. State of Rajasthan* [*Chittarmal v. State of Rajasthan*, (2003) 2 SCC 266, para 14: 2003 SCC (Cri) 514]. The permissibility of convicting an accused individually under a simpliciter provision after group conviction with the aid of Section 149IPC fails, was further explored in *Atmaram Zingaraji v. State of Maharashtra* [*Atmaram Zingaraji v. State of Maharashtra*, (1997) 7 SCC 41: 1997 SCC (Cri) 990], wherein this Court held that : (SCC p. 43, paras 4-6)

“4. The next question that falls for our determination is whether, after having affirmed the acquittal of all others, the High Court could convict

the appellant under Section 302IPC (simpliciter). The charges framed against the accused (quoted earlier) and the evidence adduced by the prosecution to bring them home clearly indicate that, according to its case, the nine persons arraigned before the trial court — and none others, either named or unnamed (totalling a minimum of five or more persons) — formed the unlawful assembly. Consequent upon the acquittal of the other eight, the appellant could not be convicted with the aid of Section 149IPC, more particularly, in view of the concurrent findings of the learned courts below that the other eight persons were not in any way involved with the offences in question.

5. The same principle will apply when persons are tried with the aid of Section 34IPC. In *Krishna Govind Patil v. State of Maharashtra* [*Krishna Govind Patil v. State of Maharashtra*, 1963 SCC OnLine SC 29 : (1964) 1 SCR 678: AIR 1963 SC 1413], a four-Judge Bench of this Court has laid down that when four accused persons are tried on a specific accusation that only they committed a murder in furtherance of their common intention and three of them are acquitted, the fourth accused cannot be convicted with the aid of Section 34IPC for the effect of law would be that those who were with him did not conjointly act with the fourth accused in committing the murder.

6. In either of the above situations, therefore, the sole convict can be convicted under Section 302IPC (simpliciter) only on proof of the fact that his individual act caused the death of the victim. To put it differently, he would be liable for his own act only. *In the instant case, the evidence on record does not prove that the injuries inflicted by the appellant*

alone caused the death; on the contrary, the evidence of the eyewitnesses and the evidence of the doctor who held the post-mortem examination indicate that the deceased sustained injuries from other weapons also and his death was the outcome of all the injuries. The appellant, therefore, would be guilty of the offence under Section 326IPC as he caused a grievous injury to the deceased with the aid of a jambia (a sharp-cutting instrument).” (emphasis supplied)

2. This position of law has finally been summed up very succinctly in *Nallabothu Venkaiah v. State of A.P.* [*Nallabothu Venkaiah v. State of A.P.*, (2002) 7 SCC 117: 2002 SCC (Cri) 1615] : (SCC p. 128, para 24)

“24. On an analytical reading of a catena of decisions of this Court, the following broad proposition of law clearly emerges : (a) the conviction under Section 302 simpliciter without aid of Section 149 is permissible if overt act is attributed to the accused resulting in the fatal injury which is independently sufficient in the ordinary course of nature to cause the death of the deceased and is supported by medical evidence; (b) wrongful acquittal recorded by the High Court, even if it stood, that circumstances would not impede the conviction of the appellant under Section 302 read with Section 149IPC; (c) charge under Section 302 with the aid of Section 149 could be converted into one under Section 302 read with Section 34 if the criminal act done by several persons less than five in number in furtherance of common intention is proved.” (emphasis supplied)

3. Although both Sections 34 and 149IPC are modes for apportioning vicarious liability on the individual members of a group, there exist a few important differences between these two provisions. Whereas Section 34 requires active participation and a prior

meeting of minds, Section 149IPC assigns liability merely by membership in the unlawful assembly. In reality, such “common intention” is usually indirectly inferred from the conduct of the individuals, and only seldom is it done through direct evidence. [*Mahbub Shah v. King Emperor, 1945 SCC OnLine PC 5 : (1944-45) 72 IA 148, pp. 153-54: AIR 1945 PC 118*]

24. Applying these settled principles to the facts of the present case, it may be seen that both the common object and the common intention are traced back to the same evidence, i.e. evaluating the conduct of the accused as narrated by the injured and the eyewitness. Further, a perusal of Section 313CrPC statement shows that the appellants were expressly confronted with their specific role in the offence: that each of them had individually attacked the complainant with a deadly object in furtherance of the common intention of killing him. We, therefore, do not find that the appellants suffered any adverse effect when the High Court held three of them individually guilty for the offence of attempted murder, without the aid of Section 149IPC.

25. We do not doubt that on facts, an offence under Section 307IPC is clearly made out against each of the three appellants. The medical experts have, in their depositions, clearly explicated that the weapons used and the injuries inflicted were more than sufficient to cause death in the ordinary course of nature. The appellants made death threats to the complainant on 24-1-1998, and then they used sharp-edged weapons the very next day and further declared that they would not rest till they killed the complainant. It manifests the appellant's intention to inflict bodily injury, knowing fully that such injuries would ordinarily lead to the complainant's death. The recovery of the axe

(kulhari) from Rohtas, which is on the record as Ext. P-7 further punches holes in the mask of denial worn by the appellants.

26. The gravity of the injuries is beyond doubt. Not only were there seven injuries, some of which were deep cuts on vital parts of the body, including on the head (above the ear), but the appellants also broke all the bones in the complainant's feet below the knee. Most appallingly, the injuries have led to amputation of an entire limb, leaving the complainant permanently disabled. This by itself shows the very likely possibility of the complainant dying if not for the timely intervention of PW 3 and appropriate medical care by PGIMS Rohtak. Given such extreme injuries, we can fathom no rhyme or reason for either the complainant (PW 1) or his brother, Balwan (PW 3), to falsely implicate the appellants and allow the actual culprits to go scot-free. On the contrary, the candour of PW 1 and the responses of PW 3 inspire confidence and provide an undeniable explanation of the incident.

27. That apart, even the requirements of Section 34IPC are well established as the attack was apparently premeditated. The incident was not in a spur of the moment. The appellants had previously threatened the complainant with physical harm if he were to attempt to irrigate his fields. Their attack on 25-1-1998 was thus pre-planned and calculated. There is nothing on record to suggest that the complainant caused any provocation. Specific roles have been attributed to each of the appellants by the injured and the solitary eyewitness, establishing their individual active participation in the crime.

35. A similar view was taken in *Mala Singh v. State of Haryana*, (2019) 5 SCC 127: (2019) 2 SCC (Cri) 452: 2019 SCC OnLine SC 175, wherein it was observed at page 136:-

35. A combined reading of Sections 216, 386 and 464 CrPC would reveal that an alteration of charge where no prejudice is caused to the accused or the prosecution is well within the powers and the jurisdiction of the court, including the appellate court.

36. In other words, it is only when any omission to frame the charge initially or till culmination of the proceedings or at the appellate stage results in failure of justice or causes prejudice, the same may result in vitiating the trial in an appropriate case.

8. The learned Judge Vivian Bose, J. speaking for the Bench in his inimitable style of writing, held: (*Willie Slaney case [Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116: 1956 Cri LJ 291], AIR p. 124, para 23)

“23. ... Therefore, when there is a charge, and there is either error or omission in it or both, and whatever its nature, it is not to be regarded as material unless two conditions are fulfilled both of which are matters of fact: (1) the accused has “in fact” been misled by it “and” (2) it has occasioned a failure of justice. That, in our opinion, is reasonably plain language.”

40. Now coming to the question regarding altering of the charge from Section 149 to Section 34 IPC read with Section 302 IPC, this question was considered by this Court for the first time in *Lachhman Singh v. State* [*Lachhman Singh v. State*, (1952) 1 SCC 362: AIR 1952 SC 167: 1952 Cri LJ 863] where Fazl Ali, J. speaking for the Bench held as under: (AIR p. 170, para 13)

“13. It was also contended that, there being no charge under Section 302 read with Section 34, Penal Code, the conviction of the appellants under Section 302 read with Section 149 could not have been altered by the High Court to one under Section 302 read with Section 34, upon the acquittal of the remaining accused persons. The facts of the case are, however, such that the accused could have been charged alternatively, either under Section 302 read with Section 149 or under Section 302 read with Section 34. The point has therefore no force.”

41. This question was again examined by this Court in *Karnail Singh v. State of Punjab* [*Karnail Singh v. State of Punjab*, AIR 1954 SC 204: 1954 Cri LJ 580] wherein the learned Judge Venkatarama Ayyar, J., elaborating the law on the subject, held as under: (AIR p. 207, para 7)

“7. Then the next question is whether the conviction of the appellant under Section 302 read with Section 34, when they had been charged only under Section 302 read with Section 149, was illegal. The contention of the appellants is that the scope of Section 149 is different from that of Section 34, that while what Section 149 requires is proof of a common object, it would be necessary under Section 34 to establish a common intention and that therefore when the charge against the accused is under Section 149, it cannot be converted in appeal into one under Section 34. The following observations of this Court in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, (1953) 2 SCC 36: AIR 1953 SC 364: 1953 Cri LJ 1465] were relied on in support of this position: (AIR p. 366, para 24)

‘24. Nor is it possible in this case to have recourse to Section 34 because the appellants have not been charged with that even in the alternative,

and the common intention required by Section 34 and the common object required by Section 149 are far from being the same thing.'

It is true that there is substantial difference between the two sections but as observed by Lord Sumner in *Barendra Kumar Ghosh v. King Emperor* [*Barendra Kumar Ghosh v. King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: AIR 1925 PC 1], they also to some extent overlap and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. If the common object which is the subject-matter of the charge under Section 149 does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not therefore to be permitted. But if the facts to be proved and the evidence to be adduced with reference to the charge under Section 149 would be the same if the charge were under Section 34, then the failure to charge the accused under Section 34 could not result in any prejudice, and in such cases, the substitution of Section 34 for Section 149 must be held to be a formal matter.

We do not read the observations in *Dalip Singh v. State of Punjab* [*Dalip Singh v. State of Punjab*, (1953) 2 SCC 36: AIR 1953 SC 364: 1953 Cri LJ 1465] as an authority for the broad proposition that in law there could be no recourse to Section 34 when the charge is only under Section 149. Whether such recourse can be had or not must depend on the facts of each case. This is in accord with the view taken by this Court in *Lachhman Singh v. State* [*Lachhman Singh v. State*, (1952) 1 SCC 362: AIR 1952 SC 167: 1952 Cri LJ 863], where the substitution of Section 34 for

Section 149 was upheld on the ground that the facts were such

‘that the accused could have been charged alternatively either under Section 302 read with Section 149, or under Section 302 read with Section 34’ (AIR p. 170, para 13).

42. The law laid down in *Lachhman Singh* [*Lachhman Singh v. State*, (1952) 1 SCC 362: AIR 1952 SC 167: 1952 Cri LJ 863] and *Karnail Singh* [*Karnail Singh v. State of Punjab*, AIR 1954 SC 204: 1954 Cri LJ 580] was reiterated in *Willie (William) Slaney* [*Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116: 1956 Cri LJ 291] wherein Vivian Bose, J. speaking for the Bench while referring to these two decisions, held as under: [*Willie (William) Slaney case* [*Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116: 1956 Cri LJ 291], AIR p. 129, para 49]

“49. The following cases afford no difficulty because they directly accord with the view we have set out at length above. In *Lachhman Singh v. State* [*Lachhman Singh v. State*, (1952) 1 SCC 362: AIR 1952 SC 167: 1952 Cri LJ 863], it was held that when there is a charge under Section 302 of the Penal Code read with Section 149 and the charge under Section 149 disappears because of the acquittal of some of the accused, a conviction under Section 302 of the Penal Code read with Section 34 is good even though there is no separate charge under Section 302 read with Section 34, provided the accused could have been so charged on the facts of the case.

The decision in *Karnail Singh v. State of Punjab* [*Karnail Singh v. State of Punjab*, AIR 1954 SC 204: 1954 Cri LJ 580] is to the same effect and the question about prejudice was also considered.”

43. This principle of law was then reiterated after referring to law laid down in *Willie (William) Slaney* [*Willie (William) Slaney v. State of M.P.*, AIR 1956 SC 116: 1956 Cri LJ 291] in *Chittarmal v. State of Rajasthan* [*Chittarmal v. State of Rajasthan*, (2003) 2 SCC 266: 2003 SCC (Cri) 514] in the following words: (*Chittarmal case* [*Chittarmal v. State of Rajasthan*, (2003) 2 SCC 266: 2003 SCC (Cri) 514], SCC p. 273, para 14)

“14. It is well settled by a catena of decisions that Section 34, as well as Section 149, deals with liability for constructive criminality, i.e. vicarious liability of a person for acts of others. Both sections deal with combinations of persons who become punishable as sharers in an offence. Thus, they have a certain resemblance and may to some extent overlap. But a clear distinction is made out between common intention and common object in that common intention denotes action in concert and necessarily postulates the existence of a pre-arranged plan implying a prior meeting of the minds, while common object does not necessarily require proof of prior meeting of minds or preconcert. Though there is a substantial difference between the two sections, they also overlap to some extent, and it is a question to be determined on the facts of each case whether the charge under Section 149 overlaps the ground covered by Section 34. Thus, if several persons numbering five or more do an act and intend to do it, both Section 34 and Section 149 may apply. If the common object does not necessarily involve a common intention, then the substitution of Section 34 for Section 149 might result in prejudice to the accused and ought not, therefore, to be permitted. But if it does involve a common intention, then the substitution of Section

34 for Section 149 must be held to be a formal matter. Whether such recourse can be had or not must depend on the facts of each case. The non-applicability of Section 149 is, therefore, no bar in convicting the appellants under Section 302 read with Section 34 IPC, if the evidence discloses the commission of an offence in furtherance of the common intention of them all. (See *Barendra Kumar Ghosh v. King Emperor* [*Barendra Kumar Ghosh v. King Emperor*, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40: AIR 1925 PC 1]; *Mannam Venkatadari v. State of A.P.* [*Mannam Venkatadari v. State of A.P.*, (1971) 3 SCC 254: 1971 SCC (Cri) 479]; *Nethala Pothuraju v. State of A.P.* [*Nethala Pothuraju v. State of A.P.*, (1992) 1 SCC 49: 1992 SCC (Cri) 20] and *Ram Tahal v. State of U.P.* [*Ram Tahal v. State of U.P.*, (1972) 1 SCC 136: 1972 SCC (Cri) 80])”

36. Therefore, the learned trial Court had rightly altered the charge from Section 149 to Section 34 of the IPC.

37. It was submitted that the benefit of the Probation of Offenders Act should have been granted to the accused, and the learned trial Court erred in not extending the benefit to them. This submission is only stated to be rejected. The facts of the present case show that the informant was riding the motorcycle. He had simply blown the horn to ask the pedestrians to move away. The accused took out a khukhri and inflicted injuries on the informant and Surajmani. This shows that the accused had scant regard for life, and their act was required to be viewed seriously. Considering this fact, the sentence of three years for

the commission of an offence punishable under Section 307 of the IPC is not excessive.

38. Learned trial Court had rightly held that the khukhri is an arm of category five and required a license for its possession. The accused failed to produce any license for possessing the khukhri; the learned trial Court had rightly convicted the accused Naresh Kumar for the commission of an offence punishable under Section 25 of the Arms Act.

39. Thus, there is no infirmity in the judgment and order passed by the learned trial Court requiring an interference from this Court.

40. In view of the above, the present appeals fail, and it is dismissed. Pending miscellaneous application(s), if any, also stand disposed of.

41. Records be sent back to the learned Courts forthwith, along with a copy of the judgment.

(Rakesh Kainthla)
Judge

15th June, 2026
(Meera)