

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 2432 of 1999

Vikki @ Ajit Ram
State Of Madhya Pradesh

Versus

---- Appellant
---- Respondent

Criminal Appeal No. 2398 of 1999

Vinod Malviya
State Of Madhya Pradesh

Versus

---- Appellant
---- Respondent

Criminal Appeal No. 2435 of 1999

Babbey @ Genrail Singh
State Of Madhya Pradesh

Versus

---- Appellant
---- Respondent

&

Criminal Appeal No. 2527 of 1999

Harprit Singh
State Of Madhya Pradesh

Versus

---- Appellant
---- Respondent

For Appellants : Smt. Renu Kochar & Shri K.K.Singh, Advocate

For State : Shri S.R.J.Jaiswal, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

21.08.2017

1. All the appeals are against the judgment dated 28.08.1999 passed by the First Additional Sessions Judge, Durg, in S.T. No.178 of 1996 whereby the appellants have been convicted under Section 307 and further under Section 307 read with Section 34 of I.P.C. and were sentenced to 5 years

R.I. and fine of Rs.1000/- and in absence of payment of fine, 6 months further R.I. was ordered.

2. As per the prosecution case, the complainant Gurudeep Singh was running a STD, PCO in front of place known as Om Parisar at Durg. Before the date of incident, on 20.08.1995 some quarrel took place with the complainant and that of Babbey @ Genrail Singh (A-1) & Vicky @ Ajit Rai (A-2); therefore, they were enraged to take revenge. Therefore, on 20.08.1995 while Gurudeep Singh was sitting in a shop, at that time, Babbey @ Genrail Singh (A-1) & Vicky @ Ajit Rai (A-2) reached there, started quarreling and extended the threat that in the evening he would be attacked. The complainant Gurudeep Singh informed this fact to his brother Bhagat Singh, however, he advised him not to lodge any report. On the same day, at about 8 p.m., while Gurudeep Singh was sitting at his STD PCO, at that time, the accused Babbey @ Genrail Singh (A-1), Vicky @ Ajit Rai (A-2), Vinod Malviya (A-3) & Harprit Singh (A-4) along-with 8-9 persons came there to take the revenge. At that time, two of the friends of complainant were also sitting alongwith complainant and looking to situations they intervened in the matter to settle the dispute of complainant, thereafter, the accused went away from there. After some time, all the accused again came to the shop and asked the complainant to come out of the shop. The moment, the complainant Gurudeep Singh came out of the shop, all the accused started beating him and Babbey @ Genrail Singh stabbed him by Knife at his abdomen and on the chest and when he cried for help at that time his sister Seema, Sudhir Gupta and others came there and after seeing them, the accused fled away from the seen. The injured Gurudeep (PW-6) was taken to a private Hospital by his sister Seema (PW-8) and one Sudhir Gupta (PW-11). He was primarily treated there and subsequently the injured was taken to the District Hospital wherein he was examined by Dr. Prabhat Pandey (PW-13) and thereafter he was referred to Sector-9 Hospital for further treatment. At

Sector 9 Hospital complainant was operated and report was given. While the deceased was being treated in the Hospital, an FIR was lodged by the brother of the complainant Bhagat Singh (PW-5) and case was registered under Section 307 read with Section 34 of I.P.C. After the incident, one of the accused, Babbey @ Genrail Singh absconded and thereafter he was arrested on a later date and on his memorandum, the weapon which was used in the offence was recovered by Ex.P-4. Different cloths which were seized were subjected to FSL and the document of treatment i.e. bed-head ticket of Sector-9 Hospital, Bhilai were seized by Ex.P-7. Thereafter, the investigation and statements were carried out and charge sheet under Section 307 read with Section 34 of I.P.C. was filed.

3. During the course of trial, the appellants/accused abjured their guilt and claimed to be tried. The prosecution in support of their case had examined as many as 18 witnesses and as appears no evidence was adduced on behalf of the accused. The learned trial Court after evaluating the evidence has convicted the accused/appellants as aforesaid, therefore, the instant appeal.
4. Smt. Renu Kochar, learned counsel appearing for the appellants Vicky in Criminal Appeal No. 2432 of 1999 and Babbey @ Genrail Singh in Criminal Appeal No. 2435 of 1999 would submit that in the FIR (Ex.P-5) only allegation of stab injury is on Genrail Singh has been alleged whereas in the statements before Court, improvement is made. It is further contended that neither there was intention nor there was any knowledge of the other accused to kill the complainant, as the other accused were not armed with weapons. It is further contended that the injury was not sufficient to cause death and there has been material contradiction and omission in the statement of the witnesses. It is further stated that except the victim, the other witnesses have not supported the case of the prosecution, therefore, the conviction cannot be sustained. She further

submits that neither there is any report of FSL nor any seizure of the weapon was made. So the entire conviction under Section 307 of I.P.C. deserves to be set aside.

5. In respect of other Criminal Appeals preferred by Vinod Malviya bearing No.2398 of 1999 and that of Harprit Singh bearing No.2527 of 1999, despite repeated calls, no appearance was made by the counsels on behalf of the appellants. The message was also sent through the messenger of the Court and names of Advocates were also displayed in the board requesting them to appear with particulars of names of the concerned Advocates. However, no one turned up, as such, in such eventuality having no option open Mr. K.K.Singh who is in panel of the legal aid was requested to assist the Court and was appointed to provide the legal aid to the appellants/accused to argue the case on behalf of appellants. He meticulously went through the records for considerable time and made his submission.
6. Shri K.K.Singh, learned counsel would submit that the conviction under Section 307 of I.P.C. cannot be withheld as there was no predetermination of mind of the appellants. It is stated that out of a trivial dispute, the incident happened and while one of the appellant was being beaten the incident took place. It is further contended that there is a major contradiction in the statement of the witnesses and one of the Doctor who has first treated the injured i.e. Kalyan Sahu was not examined; therefore, the very nature of injury which was inflicted has not been proved. It is also contended that causing the stab injury is only on two other appellants, therefore, the present appellants may be acquitted accordingly. It is further contended that the incident is of 1995 and considering the period passed, the appellants may be acquitted of the charges.
7. Per contra, learned State counsel opposes the argument advanced by the learned counsel for the appellants and would submit that the orders of

conviction and sentence are well merited, which do not call for any interference.

8. Perused the judgment and record of the Court below. The injured Gurudeep Singh is examined as PW-6. In his statement before the Court, he identified all the accused by name as also by their face. Describing the incident, it is stated that two years back in the morning Genrail Singh (A-1) & Vinod Malviya (A-3) came to his STD PCO shop and entered into scuffle and further gave a threat that in the evening they will again come and will kill him. Subsequently, at about 8 O'clock, in the evening, all the accused who were present in the Court came alongwith 8-9 persons to his shop and at that time, the injured was sitting alongwith his friends Sonu, Ravindra & Sunil and further extended threat that they will kill him. At that time, the friends intervened and some settlement was arrived at thereafter they went away. The witness stated that again after one hour, all the accused again came to his shop, at that time, he was alone in the shop. Then Vinod Malviya (A-3) and one Sardar caught hold of him from back while other two remaining accused who were holding Knife in their hand gave assault on his abdomen and three assault was made on the body and when he fell down all the accused fled away from the scene. The witness further contended that the shop and house are adjacent, after hearing the noise, his sister Seema and neighbour Sudhir Gupta came and took him to Hospital. The witness stated that he was admitted to the Hospital and was treated for 10-12 days and he was operated upon.
9. In the cross examination of this witness, the identity of accused have further been established. It is stated that prior to the incident some quarrel took place with Genrail and with Vicky too 2-3 years back and the reason assigned that Vicky had passed some comment on a girl. Narrating further in the cross examination, this fact has come that he was held by accused and when was left, he fell down to ground. How many stab wound was

made and what was the timing, the witness stated that he could not narrate as he lost his conscious and regained his conscious after three days and thereafter the statement was recorded. In the cross examination, further this fact was reiterated that first blow was made by Genrail thereafter Vicky had assaulted. The suggestion to the fact that Vicky (A-2) was not holding any Knife was denied and the suggestion that name of the accused have falsely been implicated was also denied. In reply to the suggestion whether he tried to stop the assault, it is stated since he was held by other accused, therefore, he could not resist. Therefore, the fact that all the four accused were present in the spot when assault was made has been established by the victim in his entire statement before the Court and it is also established that few of accused inflicted the blow while other were holding him.

10. The witness though have stated that earlier the threat was extended, he had not made a report do not dilute the fact with respect to the incident. Further suggestion given to the victim by the other accused that whether entire Knife had gone inside his body or not, he could not tell the same and which injury was inflicted by which accused, so as to identify the same becomes immaterial. The fact as established by the injured is that all the four accused had come and assaulted. Further elaborating the incident it was made clear that out of the four accused, two accused firstly came to the shop in the morning and extended threat, then again came in the evening at about 8 O'clock, at that time, two of the friends of complainant intervened and pacified the dispute. Thereafter, again all four accused came back after certain time and two of the accused caught hold of the victim and two of the accused assaulted by the victim by Knife.
11. The witness Seema (PW-8), sister of the victim, supporting the incident stated that when she heard the noise that some dispute was going on and all the accused & victim were in oral argument. She could identify 8-10

boys wherein she recognized Genrail Singh (A-1), Vicky (A-2), Vinod Malviya (A-3) and Harprit Singh (A-4). When she went there, his brother told that some compromise was affected and all the accused have gone back. After 10-15 minutes, again Genrail Singh, Vinod, Vicky & Harprit came back and while hearing the noise, when she went to the shop, she saw Genrail Singh (A-1) gave a Knife blow to his brother and second blow was given by Vicky (A-2) and Vinod Malviya (A-3) was beating by hand & fists and Harprit Singh (A-4) was along with them. She stated that thereafter her brother became unconscious and he was taken to Gayatri Nursing Home and after assault all the accused had fled away.

12. The map of the place of incident is marked as Ex.P-2. The place of incident is shown as A-1. It appears that it is an open area nearby STD, PCO and on the road. Therefore, the occurrence of the incident and the place corroborates the statement of victim. The statement of Gurudeep Singh (PW-6), the victim, shows that he has stated that he was sitting in the STD, PCO and the area was illuminated one affirmed by the presence of electric light, which the prosecution witnesses have also stated.
13. The brother of the victim Bhagat Singh, S/o. Satnam Singh (PW-5) in his statement has stated that the complainant is his brother and in the morning on 20.8.1995 at about 12 O'clock his brother Gurudeep Singh and one Ratan had come to me and stated that Vinod Malviya & Genrail Singh had extended the threat of assault. Subsequently, on the same day, at about 9 O'clock, he received information that his brother has been assaulted and when he reached to place of incident it recovered that his brother had been taken to the Hospital. He further disclosed the fact that his brother had disclosed him that all the accused have assaulted him and Genrail & Vicky had stabbed by way of Knife and others by hand & fists. Subsequently, he was admitted to the Hospital and the FIR (Ex.P-5) was lodged.

14. Perusal of the FIR (Ex.P-5) would show that it was lodged on 20.08.1995 at 22:00 hours for the incident happened at about 9:00 p.m. The FIR contains all the names of four accused. Narrating the incident, Bhagat Singh (PW-5) has stated that in the morning his brother Gurudeep was beaten by hand & fist by the accused Genrail Singh and also extended the threat. Thereafter, in the evening, again Genrail Singh came back with other accused and called victim outside of STD, PCO to settle the dispute and when his brother came out of the STD PCO, four of the accused who were named in the FIR surrounded him and Genrail Singh assaulted 3-4 blows by way of Knife on his abdomen and the other accused assaulted by way of hand and fists. The statement of the victim PW-6 would show that he has stated that he had lost his conscious and subsequently, after three days his statement was recorded. At the time of lodging of FIR, the record would show that the injured was taken to the Hospital. The witness PW-5 further stated that initially his brother was taken to Gayatri Nursing Home, thereafter, after arranging the vehicle, he was taken to the District Hospital and there incident was disclosed. The witness has further clarified that he had not asked anything from his injured brother and further in cross examination at para 7 had stated the victim did not talk to anyone while was taken to Hospital. The witness has stated in the night at about 11 O'clock, his brother was taken to Sector-9 Hospital and at about 12 O'clock the report was made. Therefore, the incident if are examined, in the backdrop of the case, it would show & demonstrate that it is quite natural that after incident happened, as an emergency, the injured was taken to the Hospital and the FIR was made on hear-say. Consequently, the minor contradictions, which appeared in the statement of this witness do not supersede the statement of the victim or raises any doubt.
15. Dr. Prabhat Pandey (PW-13), who was Senior Medical Officer in the District Hospital Durg, his statement narrated that on 20.08.1995 at about 11 O'clock, he had examined Gurudeep Singh, S/o. Satnam Singh, who

was brought by the police and while examining him, he found two injuries in the abdomen and one injury in the right side of the chest and the report is Ex.P-10. According to him :

- (i) in the abdomen one incise wound of 4 x 2 x 2 cm was present,
- (ii) in the lower part of the abdomen one incise wound of 1x ½ x ½ cm was found, and
- (iii) below the ribs on the right side 3 x 2 x 2 cm incise wound was found.

Ex.P-10 has been proved by the Doctor.

16. It is further stated that the said injury were inflicted by sharp cutting weapon within 2 hours. The Doctor has further stated that subsequently on 03.02.1996 certain cloths and knife were placed before him and query was made as to whether the inflicted injury could have been inflicted by the said seized weapon i.e. Knife and whether the death was possible. In reply to it, the Doctor by Ex.P-8 had given a report. Doctor has suggested for FSL examination of the same and in respect of the specific query whether by the injury, death could have been caused ? the Doctor had answered it as "Yes". In the cross examination of this Doctor, the Doctor had stated that the injuries were internal, as such, with respect to bleeding nothing much was opined. With respect to the statement of the Doctor that whether such injury could have been caused death, no cross examination has been made and primarily suggestions were made only to establish that no severe bleeding was caused. Consequently, the report of the Doctor remained un-rebutted.

17. As per the statement of the injured PW-6 and his brother PW-5, it is stated that after examining the injured at District Hospital, he was referred to Sector-9 Hospital. The Doctor (PW-1) Subhashish Mandal stated that on 20.08.1995 Gurudeep Singh, S/o. Satnam Singh was admitted in the Hospital and he was examined by Doctor R.B.Singh. Ex.P-1 is the document whereby he was admitted in Sector-9 Hospital. Perusal of the

document Ex.P-1 would show that on 20.08.1995 at 11:15 p.m., injured was admitted to the Hospital and discharged on 31.08.1995. The provisional diagnosis shows that it was reported as stab injury. Dr. M.K.Divedi (PW-12) who was Senior Consultant Radiologist at Sector-9 Hospital stated that on 20.08.1995, he had taken X-ray and had given a report by Ex.P-9. Thereafter, the injured was examined by Dr. R.P.Singh (PW-18) at Sector-9 Hospital who was Surgeon.

18. According to the Surgeon, he had examined the injured Gurudeep Singh at about 11:40 p.m. and he was having incise wound on abdomen and chest and he was sent from Durg Hospital. On examination, he stated that (i) in side the abdomen, bleeding was present and the injury was over 10 cm above the Navel and was deep of 3 x 1.5 cm in side the abdomen; (ii) incise injury was below the Navel in size 1 x 5 cm and was deep wound and bleeding was present; and (iii) over the chest in the right side in between 6 & 7 ribs 3 x 1.5 cm which was deep uptill the bone and 3 cm on the right side. According to this Doctor, since excessive bleeding had took place and the injured was serious and he was operated on emergency and operation continued up-till 5:30 in the morning. During the operation, stomach & small intestine were found to be punctured and liver was also damaged and from inside the abdomen 300 ml of blood was taken out and tube was inserted to take out the remaining blood and during such treatment seven bottles of blood were transfused. According to him, all the injuries were grievous and report was given as Ex.P-14. Perusal of Ex.P-14, which is the part of the Hospital record would show the nature of injury and area. Therefore, the statement of the Doctors when are seen jointly alongwith the document, it goes to show that because of the injury, emergency operation was conducted and so much so the internal organs i.e. intestine & stomach were also damaged. Doctor has also stated that by extraction tube 300 ml of blood were further taken out apart from the time of operation.

19. In the background of this case, when the relationship between the medical evidence and ocular evidence is considered and tested, which shows that the injured has contended and maintained his stand that he received three stab injuries and have named all the accused that two of the accused has inflicted injury while other two were holding him. The fact that initially some incident happened in the morning of 20.08.1995 wherein threat was extended and two of accused challenged to come in the evening was actually executed by the appellants. While in the second time when they came back for the assault, at that time, two of the friends intervened and matter was settled. Thereafter, they went back again and four of the accused came back and deadly injury was inflicted. The number of injuries have been maintained to be three which are on the vital part of the body. The circumstances in which the incident happened, after the injury, the injured was first taken to a nearby Nursing Home where-from he was referred to Govt. District Hospital and the District Hospital Doctor in turn considering the nature of injury, referred the injured to Sector-9 Superspeciality Hospital. The Doctor of Superspeciality Hospital, Surgeon (PW-18), operated the victim and stated that emergency operation was carried out and repair of the internal organ was also made since the bleeding was caused by the injury on the stomach, small intestine and liver. Therefore, reading of the ocular evidence along with the medical evidence, inherent consistency appears and the probability of the incident has been established, which makes the statement of the witnesses credit-worthy. The probative value of the evidence i.e. injured and also the Doctor when are read together, it has establishes that the injuries inflicted were fatal in nature, which could have taken the life of the injured. Further, the eye-witness who is also injured person has narrated the name of the appellants, therefore, due credence to his version needs to be accorded.
20. With respect to the evidence of victim, recently the Supreme Court in Criminal Appeal Nos. 513-514 of 2014 decided on 09.01.2017 in case of

Baleshwar Mahto & Anr. v. State of Bihar & Anr., has reiterated the law laid down in case of **Abdul Sayeed v. State of Madhya Pradesh**, which was reported in **(2010) 10 SCC 259**, which reads as under :

28. The question of the weight to be attached to the evidence of a witness that was himself injured in the course of the occurrence has been extensively discussed by this Court. Where a witness to the occurrence has himself been injured in the incident, the testimony of such a witness is generally considered to be very reliable, as he is a witness that comes with a built-in guarantee of his presence at the scene of the crime and is unlikely to spare his actual assailant(s) in order to falsely implicate someone. "Convincing evidence is required to discredit an injured witness." [Vide *Ramlagan Singh v. State of Bihar* [(1973) 3 SCC 881:1973 SCC (Cri) 563: AIR 1972 SC 2593], *Malkhan Singh v. State of U.P.* [(1975) 3 SCC 311 : 1974 SCC (Cri) 919 : AIR 1975 SC 12], *Machhi Singh v. State of Punjab* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681], *Appabhai v. State of Gujarat* [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696], *Bonkya v. State of Maharashtra* [(1995) 6 SCC 447 : 1995 SCC (Cri) 1113], *Bhag Singh* [(1997) 7 SCC 712 : 1997 SCC (Cri) 1163], *Mohar v. State of U.P.* [(2002) 7 SCC 606 : 2003 SCC (Cri) 121] (SCC p. 606 b-c), *Dinesh Kumar v. State of Rajasthan* [(2008) 8 SCC 270 : (2008) 3 SCC (Cri) 472], *Vishnu v. State of Rajasthan* [(2009) 10 SCC 477 : (2010) 1 SCC (Cri) 302], *Annareddy Sambasiva Reddy v. State of A.P.* [(2009) 12 SCC 546 : (2010) 1 SCC (Cri) 630] and *Balraje v. State of Maharashtra* [(2010) 6 SCC 673 : (2010) 3 SCC (Cri) 211]

29. While deciding this issue, a similar view was taken in *Jarnail Singh v. State of Punjab* [(2009) 9 SCC 719 : (2010) 1 SCC (Cri) 107], where this Court reiterated the special evidentiary status accorded to the testimony of an injured accused and relying on its earlier judgments held as under: (SCC pp. 726-27, paras 28-29)

"28.....In *Shivalingappa Kallayanappa v. State of Karnataka* [1994 Supp (3) SCC 235 : 1994 SCC (Cri) 1694] this Court has held that the deposition of the injured witness should be

relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies, for the reason that his presence on the scene stands established in case it is proved that he suffered the injury during the said incident.

29. In *State of U.P. v. Kishan Chand* [(2004) 7 SCC 629 : 2004 SCC (Cri) 2021] a similar view has been reiterated observing that the testimony of a stamped witness has its own relevance and efficacy. The fact that the witness sustained injuries at the time and place of occurrence, lends support to his testimony that he was present during the occurrence. In case the injured witness is subjected to lengthy cross-examination and nothing can be elicited to discard his testimony, it should be relied upon (vide *Krishan v. State of Haryana* [(2006) 12 SCC 459 : (2007) 2 SCC (Cri) 214]). Thus, we are of the considered opinion that evidence of Darshan Singh (PW 4) has rightly been relied upon by the courts below.”

30. The law on the point can be summarised to the effect that the testimony of the injured witness is accorded a special status in law. This is as a consequence of the fact that the injury to the witness is an inbuilt guarantee of his presence at the scene of the crime and because the witness will not want to let his actual assailant go unpunished merely to falsely implicate a third party for the commission of the offence. Thus, the deposition of the injured witness should be relied upon unless there are strong grounds for rejection of his evidence on the basis of major contradictions and discrepancies therein.”

21. Therefore, if we translate the aforesaid principles in the facts of this case, it would show that the injured has named all the accused, therefore, the minor contradictions that who had inflicted the injury at what point of time alongwith fact that all the accused were very much present at the time of occurrence and have actively participated to cause injury to victim cannot be easily ignored.

22. Ordinarily, every man is responsible criminally for a criminal act done by him. The principle of criminal liability is that the person who commits an offence is responsible for that and he can only be held guilty. However, Section 34 of the Penal Code makes an exception to this principle. It lays down a principle of joint liability in doing of a criminal act. The essence of that liability is to be found in the existence of common intention, animating the accused leading to doing of a criminal act in furtherance of such intention. It deals with doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for result of that as if he had done that act himself. Section 34 of the Penal Code thus lays down a principle of joint criminal liability. The common intention is gathered from the manner in which the crime has been committed, the conduct of the accused soon before and after the occurrence, the determination and concern with which the crime was committed, the weapon carried by the accused and from the nature of the injury caused by one or some of them.
23. In the circumstances of this case and the statement of the victim would show that initially in the morning, two of the victim Genrail Singh & Vinod Malviya went to the STD, PCO and picked up a quarrel and also extended the threat to assault in the evening. Thereafter, all the four accused alongwith 8-9 other people came at 8 p.m. in the evening, at that time, when the accused uttered that they will assault, two friends of the victim intervened and a settlement having arrived, they went back. While again after one hour, when the victim was alone in the shop, all the four accused came and assaulted and caused the injury to the victim. The very fact that before the final assault, earlier in the morning, two accused went to the shop, gave the threat and again came back in the evening and thereafter went back after some settlement, again all the accused came back while the victim was alone in the shop and assault was caused shows the preparation of all the accused. The appellants in their statement recorded

under Section 313 of Cr.P.C. did not give any explanation to entire conduct. The very preparation of the entire act would show that the accused had all intention to disable the injured at the time of final assault with weapon and before that two visits were already made.

24. As has been held in ***State of Rajasthan v. Shobha Ram*** reported in **(2013) 14 SCC 732** wherein the Court while evaluating the case has reiterated the principle of Section 34 of the Penal Code, which reads as under :

8. The nuances of Section 34 of the IPC have been explained by this Court in several decisions, but we will only refer to the decision in *Nadodi Jayaraman v. State of T.N.* [1992 Supp (3) SCC 161] and *Saravanan v. State of Pondicherry* [(2004) 13 SCC 238]. In *Saravanan*, the Court has observed:-

“9. Section 34 of IPC enacts that 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. The section thus lays down a principle of joint liability in the doing of a criminal act. The essence of that liability is found in the existence of “common intention” animating the accused leading to the doing of a criminal act in furtherance of such intention. The section is intended to meet a case in which it is difficult to distinguish between the act of individual members of a party and to prove exactly what part was played by each of them. It, therefore, enacts that once it is found that a criminal act has been committed by several persons in furtherance of the common intention of all, each of such persons is liable for the criminal act as if it were done by him alone. It is thus an exception to the general rule of criminal jurisprudence that it is the primary responsibility of the person who actually commits a crime and only that person can be held guilty and punished in accordance with law for his individual act.

15. It is thus clear that the criminal act referred to in Section 34 IPC is the result of the concerted action of more than one person if the said result was reached in furtherance of the common intention and each person must be held liable for the ultimate result as if he had done it himself.”

9. A perusal of Section 34 of the IPC would clearly indicate that there must be two ingredients for convicting a person with the aid of Section 34 IPC. Firstly, there must be a common intention and secondly, there must be participation by the accused persons in furtherance of the common intention. If the common intention is proved, it may not be 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 be arising out of the same common intention in order to attract the provision. The said principle is reiterated in a three-judge bench decision in *Suresh v. State of U.P.* [(2001) 3 SCC 673] and *Ramaswami Ayyangar v. State of Tamil Nadu* [(1976) 3 SCC 779], wherein the court has stated that :

“12.....The acts committed by different confederates in the criminal action may be different, but all must in one way or the other participate and engage in the criminal enterprise, for instance, one may only stand guard to prevent any person coming to the relief of the victim or may otherwise facilitate the commission of crime. Such a person also commits an "act" as much as his co-participants actually committing the planned crime.”

In the case of an offence involving physical violence, the person who instigates or aids the commission of the crime must be physically present and such presence of those who in one way or the other facilitate the execution of the common design, is itself tantamount to actual participation in the “criminal act”.

10. Insofar as common intention is concerned, it is a state of mind of an accused which can be inferred objectively from his conduct displayed in the course of commission of crime and also from prior and subsequent attendant circumstances. As observed in *Hari Ram vs. State of U.P.* [(2004) 8 SCC 146], the existence of 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. Therefore, 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 before a person can be vicariously convicted for the act of the other.

25. The Supreme Court in case of ***Birendra Das & Anr. v. State of Assam*** reported in **(2013) 12 SCC 236** has reiterated the principles laid down in case of ***Mohan Singh v. State of Punjab*** [AIR 1963 SC 174], which is reproduced as under :

17. The Constitution Bench in *Mohan Singh v. State of Punjab* [AIR 1963 SC 174], while adverting to the concept of Section 34 IPC, has ruled thus:

“13.... Like Section 149, Section 34 also deals with cases of constructive criminal liability. It provides that where 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. The essential constituent of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question

animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act done by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons, sharing the same common intention is one of the features of Section 34.”

26. Therefore, perusal of entire statement of the witnesses, on proper scrutiny and analysis, goes to show the existence of motive and the act of the accused leads to point out that all four accused had shared the common intention with meeting of minds, therefore, would make them liable for the offence committed irrespective of the role which they had played. The conduct of the accused/appellants soon before and after the occurrence and the way, the injury was inflicted leads to irresistible conclusion that all the accused had shared common intention with the accused who inflicted the injury.
27. In the result, all the accused are liable to be punished under Section 307 read with Section 34 of I.P.C. In view of the above, the appeal has no merit and is hereby dismissed. The bail bonds furnished by the appellants stand canceled and the accused/appellants are directed to surrender before the trial Court immediately to undergo the remaining jail sentence imposed upon them.

Sd/-
(Goutam Bhaduri)
JUDGE