

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH**

1. CRA-D-726-DB-2003

Jagbir and others

... Appellants

Versus

State of Haryana

... Respondent

2. CRA-S-1566-SB-2003

Hari Ram and another

... Appellants

Versus

State of Haryana

... Respondent

3. CRA-S-1798-SB-2003

Tej Pal

... Appellant

Versus

State of Haryana

... Respondent

4. CRR-242-2004

Hari Ram

... Petitioner

Versus

Jagbir and others

... Respondents

**Reserved on : 08.04.2019
Date of decision : 24.04.2019**

***CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE HARINDER SINGH SIDHU***

Present: Mr.Dinesh Arora, Advocate
for the appellants Jagbir and Sohan Pal
in CRA-D-726-DB-2013.

Mr. Vinod Ghai, Sr. Advocate with
Ms.Kanika Ahuja, Advocate for appellant Ganga Ram
in CRA-D-726-DB-2013 and
for appellants in CRA-S-1566-SB-2003 and
CRA-S-1798-SB-2003.

Mr.Sudhir Sharma, Advocate;
Mr. Ram Krishan Rana, Advocate and
Mr. Ashit Malik, Advocate
for the petitioner (complainant) in CRR-242-2004.

Mr. Vishal Garg, Addl.A.G. Haryana.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid three appeals and one revision petition, therefore, these are taken
up together and disposed of by a common judgment.

2. These appeals and revision petition have been instituted
against the judgment and order dated 11.08.2003 rendered by the
Additional Sessions Judge (Adhoc), Faridabad, in Sessions Case No.67 of
24.04.2002/16.03.2001. The appellants along with one Jaipal were charged
with and tried for offences punishable under Sections 148, 302, 307 read
with Section 149 of the Indian Penal Code (in short 'IPC'). Appellant Jagbir
was also charged with and tried for offence punishable under Section 27 of
the Arms Act.

3. Appellants Jagbir, Sohan Pal and Ganga Ram have been
convicted for committing murder of Aram Singh and sentenced to undergo
imprisonment for life and to pay fine of Rs.10,000/- each and in default of
payment of fine, to further undergo rigorous imprisonment for a period of

one year each for offence punishable under Section 302 read with Section 34 IPC. Appellants Jagbir, Ganga Ram, Sohan Pal, Tej Pal, Hari Ram and Kunwar Pal have been convicted and sentenced to undergo rigorous imprisonment for a period of one year each for offence punishable under Section 148 IPC. Appellant Jagbir and Ganga Ram have been convicted and sentenced to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each for offence punishable under Section 307 read with Section 149 IPC. Appellant Sohan Pal, Kunwar Pal, Hari Ram and Tej Pal have been convicted and sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5000/- each and in default of payment of fine, to further undergo rigorous imprisonment for a period of six months each for offence punishable under Section 307 read with Section 149 IPC. Co-accused Jaipal was given benefit of doubt and acquitted.

4. The case of the prosecution in a nutshell is that Dalpat was residing in the abadi. His brother Dalbir resided in the fields in village Dudhola. There was dispute regarding agricultural land between them and accused Jagbir, Ganga Ram, Sohan Pal and Jai Pal. Litigation was going on. On 26.10.2000, Diwali festival was being celebrated. At about 08.45 P.M., accused Jagbir, Ganga Ram, Sohan Pal and Jai Pal came to house of Dalpat. Accused Kunwar Pal and Hari Ram came on scooter. Dalbir was present with his brother at the house. Hari Ram and Kunwar Pal came to the gate of the house of Dalpat. Lalkara was raised. Sohan Pal was carrying iron rod. Ganga Ram was armed with a country made pistol. Jai Pal was armed with *lathi*. Jagbir was carrying a gun. Sohan Pal gave a blow with

iron rod on the right wrist of Dalpat. Jagbir fired a shot at him which whizzed passed the neck and shoulder of Dalpat. Dalbir went inside the house of his brother. Dalpat tried to climb up stairs but was chased by the accused. Accused Tej Pal armed with a country made pistol was present on the other stairs. He blocked the passage. Dalpat was stopped by Tej Pal. Accused Ganga Ram fired a shot at him in his abdomen. He fell down and lost consciousness and regained it at Base Hospital, Delhi Cantt. On the same date, at about 09.30 P.M. while Diwali was being celebrated, Hari Ram complainant was present at the house of Aram Singh. Tirlok, Kartar and Risal Singh were present along with Aram Singh and were talking with each other. At about 09.45 /10.00 P.M., Master Vijay Pal son of Ram Kishan came there and informed that in the house of Dalpat, accused Jagbir, Sohan Pal, Jai Pal and Ganga Ram had fired at Dalpat. Hari Ram and Aram Singh started walking towards the house of Dalpat. When they reached near the house of accused Kunwar Pal, they noticed accused Jagbir, Ganga Ram, Sohan Pal and Jai Pal coming from the opposite direction. Accused Ganga Ram and Sohan Pal raised *lalkara* that Aram Singh be also shot dead. Then Jagbir who was carrying a gun fired a shot at Aram Singh hitting him near the neck. Accused Ganga Ram said that Aram Singh may be alive and another shot be fired. Aram Singh had fallen on the ground due to the first gun shot. Accused Jagbir fired another shot which hit Aram Singh on his back. Hari Ram raised an alaram '*Bachao Bachao*'. Tirlok Singh appeared there. Many other villagers reached at the spot. Hari Ram left the place to lodge the report. Injured Dalpat was admitted in Escorts Medical Centre, Faridabad. Accused made disclosure statements. Recoveries were effected. I.O. recorded the statement of Dalpat on

03.11.2000 at Base Hospital, Delhi Cantt. The body of Aram Singh was sent for post-mortem examination. The matter was investigated. The challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. Statements of accused were recorded under Section 313 Cr.P.C. They denied the case of prosecution. The accused also examined six witnesses in their defence. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

6. Complainant Hari Ram has also filed criminal revision for enhancement of sentence and award of adequate compensation to the heirs of the deceased.

7. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove the case against the appellants.

8. Learned counsel appearing on behalf of the State has supported the prosecution case.

9. Learned counsel for the complainant has prayed for enhancement of sentence and adequate compensation to the heirs of the deceased.

10. We have heard learned counsel for the parties and have gone through the judgment and record very carefully.

11. PW-2 Dr.Shiruti Kant Sharma had conducted post-mortem examination. She noticed following injuries on the body of Aram Singh:-

“1. One lacerated wound found on right sub clavicular area just below clavical. Size 2-½ x 2” x 2” medial to right shoulder and 6” above right nipple. Margin was inverted. Colar of abrasion were present.

Clotted blood was present.

On dissection all underlines structures were damaged including lung. Wound explode and black mettalic pallet taken out.

2. *Lacerated wound on right side of back 2-1/2" above right iliac crest and extended from midline to right lateral side. Size was 4 x 2-1/2". Margin were inverted. Colar of abrasions present. Clotted blood was found. On dissection all under lying structures were damaged excluding gut stomach, kidney liver. Wound explode and black mettalic pallet taken out."*

In her opinion, the cause of death was due to shock and haemorrhage and injuries to vital organs as a result of fire arm injuries. Injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. According to her, in cross-examination, the probable firing distance could be between 3 to 10 feet.

12. PW-3 Manoj Kumar had prepared the site plans Ex.PB and Ex.PC.

13. PW-6 Hari Ram testified that it was Diwali. At 09.30 P.M. he was present in the house of Aram Singh along with Aram Singh, Tirlok, Kartar, Risal Singh. At about 09.45/10.00 P.M. Vijay Pal Master son of Ram Kishan came there. He informed that in the house of Dalpat, Jagbir, Sohan Pal, Jai Pal and Ganga Ram had fired a shot at Dalpat. He and Aram Singh started towards the house of Dalpat. When they reached near the house of Kunwar Pal Sarpanch, they noticed Jagbir, Ganga, Sohan and Jai Pal coming from the opposite side. Ganga Ram and Sohan gave a *lalkara* (exhortation). Thereafter Jaggi, who was carrying a gun, fired at Aram Singh hitting his neck. Thereafter Ganga Ram said that Aram Singh may be

alive, fire another shot. Since Aram Singh had collapsed due to first fire shot, Jaggi fired another shot which hit Aram Singh on his back. He raised alarm "*bachao bachao*". Immediately Tirlok Singh appeared there. Number of villagers assembled on the spot. The assailants ran away from the spot threatening the persons present on the spot. He went to the police station. Report was lodged. Police inspected the spot in his presence. Blood stained earth and two empty cartridges were recovered. These were taken into possession vide memo Ex.PE and Ex.PF. Two empty cartridges and one scooter were also taken into possession. Accused Jagbir was interrogated. He made disclosure statement to the effect that he had kept his licensed gun in the house of in-laws in village Nandgaon. He could get it recovered. Disclosure statement is Ex.PH. Jai Pal was also interrogated. He disclosed about the *lathi*. In his cross-examination, he deposed that they reached the spot within 8/10 minutes. It was dark. However the light was on. Statement of Tirlok Singh was recorded at night. He had seen Jagbir carrying gun from the distance of 10 paces. When *lalkara* was given, they were very close to the accused.

14. PW-7 Tirlok Singh has corroborated the statement of PW-6 Hari Ram the manner in which Ganga Ram and Sohan Pal gave *lalkara* and Jagbir gave two shots to Aram Singh. He also deposed that police collected two empty cartridges from the spot which were taken into possession vide memo Ex.PF. In his cross-examination, Jagbir fired from a short distance. The time between two shots could be half minute or so. He had tried to escape from there.

15. PW-8 Dalpat is an injured witness. He deposed that they had litigation in respect of agricultural land with Jagbir, Ganga, Sohan Pal and

Jai Pal. On 26.10.2000 it was Diwali festival. At about 08.45 P.M., accused Jagbir, Ganga Ram, Sohan Pal and Jai Pal came to his house. Kunwar Pal Sarpanch and Hari Ram were on scooter. Dalbir was present with him at the house. Hari Ram and Kunwar Pal appeared at the gate of his house. They gave *lalkara* to finish them. Sohan Pal was carrying an iron rod. Ganga Ram was armed with country made pistol. Jai Pal was armed with *lathi*. Jagbir was having a gun. Sohan Pal gave an iron rod blow which hit on his right wrist. Jagbir fired at him which passed through near his neck and shoulder without hitting him. Dalbir went in the house. He tried to escape. They chased him. Tej Pal blocked his way. He was carrying country made pistol. Ganga Ram fired at his abdomen. He collapsed and became unconscious. In his cross-examination he deposed that the first fire shot hit the wall instead of hitting him. His family members were present in the house. However they were inside the room. Jagbir fired a shot which hit the wall. He did not receive any injury while climbing up stairs. He received fire shot on the roof.

16. PW-9 Dalbir has corroborated the statement of PW-8 Dalpat in the manner in which Sohan Pal had hit Dalpat and Ganga Ram had fired at Dalpat on 26.10.2000. Kunwar Pal and Hari Ram had given *lalkara*.

17. PW-10 Dr.Neerja Ajmani deposed that on 27.10.2000 she radiologically examined Dalpat. As per skiagram, there was radio opaque shadow on the right side of pelvis. There was fracture of underlying bones, i.e. iliac.

18. PW-11 Dr.Hilal Ahemad had conducted medico legal examination of Dalpat. He noticed the following injuries on body:-

“1. *Evisceration of small gut approximately 2 feet. It was low line out side right iliac region.*

2. *Multiple punctured wounds right iliac region. Oozing of blood was there. The margins were black and inverted.*
3. *Multiple punctured wounds anterior side of neck left side of chest, anterior aspect of left shoulder.*
4. *Lacerated wound of the size 4 x 2 cms. on the dorsal aspect of right elbow."*

Injuries No.1 to 3 were result of gun shot and injury No.4 was caused by blunt weapon. In his opinion probable duration was of six hours. The condition of the injured was critical. In his cross-examination, he deposed that he could not say if the injuries were result of one shot or more. The pellets from a cartridge spread over larger area as they travel from the nozzle up to the target.

19. PW-12 Sukhvinder Singh is the I.O. He deposed that Hari Ram lodged the complaint Ex.PD. He reached the spot. He prepared the rough site plan Ex.PK. Two empty cartridges were found. These were taken into possession vide recovery memo Ex.PF. Blood stained earth was also taken into possession. He reached the hospital. Doctor opined that Dalpat was unfit to make statement. He reached the house of Dalpat. Hari Ram and Dalbir were present there. He found two empty cartridges lying at the spot. Scooter bearing No.HR30-B-0390 was also lying parked there. He arrested accused Jagbir on 28.10.2000. Jagbir made disclosure statement Ex.PH on the basis of which gun was recovered. Sohan Pal also made disclosure statement. Iron rod was taken into possession. Tej Pal was arrested on 30.10.2000. He also made disclosure statement that he had kept concealed a country made pistol but later on he denied it. He again went to the hospital. Dalpat was referred to Base Hospital, Delhi Cantt. He arrested accused Hari Ram from his house in village Dudhola. Registration certificate of scooter

and driving licence were recovered.

20. PW-13 Dr.V.K. Garg deposed that he medico legally examined Dalpat. About three feet of the small intestine was lying outside the wound on the right side of abdomen. Multiple pellet punctures were seen with active bleeding. He was subjected to X-ray and other investigations. Damaged intestine was removed. Injured was discharged on his request on 31.10.2000. In his cross-examination, he deposed that he himself had removed the pellets during the surgery.

21. DW-1 Ram Niwas had brought the register of the Casualty Medical Officer dated 26.10.2000. According to entry No.134129 of said date, Hari Ram was brought to emergency.

22. DW-2 Dr.B.L. Chhimpa deposed that he medico legally examined Kala Devi wife of Pohap Singh and Pohap Singh son of Ramjit Lal.

23. DW-3 Dr.D.K.Saroha deposed that he medico legally examined Jagbir on 28.10.2000. He noticed the following injuries on the body:-

- “1. Reddish blue contusion of the size 3 x 1” with 1” brownish abrasion with scab formation over posterior aspect of the left forearm.*
- 2. Brownish abrasion of the size 1 x 0.5” with early scab formation over left side of the forehead.*
- 3. Complaint of pain in the left side of chest and left thing, but there was no external mark of injury. Tenderness of swelling.”*

The injuries were simple in nature and caused by blunt weapon within a

probable duration of 24 to 48 hours.

24. DW-4 Pohap Singh deposed that at about 07.30 P.M., a cracker called 'rocket' was fired. It hit his buffalo. His elder son Ranjeet Singh said that he would find out from which place that cracker was fired. They asked Jawahar Singh as to why cracker was fired towards their house. His uncle Bhim Singh came there. His son Baldev Singh also came. The fight took place. He and his wife Kela were injured. They went to the General Hospital, Palwal. Kela Devi was medico legally examined.

25. DW-6 Prem Chand deposed that about one year and nine months ago, at about 03.30 P.M. he was coming to his house in Dudhola. When he reached the house of Pohap Singh, Jagbir was proceeding towards the house of Dalpat. Dalpat, Dalbir, Aram Singh and Babli were standing there with a rope. Jagbir was on scooter. With the help of rope, Jagbir was brought down from the scooter. They inflicted *lathi* blows on Jagbir. Dalpat fired a shot. Jagbir also fired a shot. He ran away towards his house.

26. The defence taken by Jagbir is that he was going on a scooter. The complainant waylaid him with the help of rope. In his defence he fired. The defence taken by other accused that they have been falsely implicated.

27. The gun recovered from accused Jagbir was sent for FSL examination. The report is Ex.PX. The results reads as under:-

“1. 12 bore DBBL gun marked W/1 is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.

2. 12 bore fired cartridge cases marked C/1, C/4 and C/2, C/3 have been fired from left and right barrels respectively of the 12 bore DBBL gun marked W/1 and

not from any other firearm even of the same make and bore because every firearm has got its own individual characteristics.

3. *Plastic aircushion wad contained in parcel No.1 could form part of 12 bore cartridge cases marked C/1 to C/4.”*

According to Ex.PY, human blood was found on *kurta, parna*, jacket, *kachha* (underwear) and *khes* (blanket). Blood stained earth and swab were material disintegrated.

28. PW-6 Hari Ram deposed that they were told that Dalpat had been shot. He in the company of Aram Singh started moving towards the house of Dalpat. When they reached near the house of Kunwar Pal, they noticed Jagbir, Ganga, Sohan and Jai Pal coming from the opposite side. Ganga Ram and Sohan Pal gave *lalkara*. Similarly PW-7 Tirlok Singh has deposed that Vijay Pal told them that Dalpat was shot by Jagbir. They started moving towards the house of Dalpat. When they reached near the house of Kunwar Pal, they noticed Jagbir, Ganga, Sohan Pal and Jai Pal coming from the opposite side. Ganga was carrying country made pistol. Sohan Pal was having iron rod. Jai Pal was having *lathi*. Jagbir was carrying a gun. Sohan and Ganga then gave a *lalkara*. Jagbir fired at Aram Singh.

29. The cause of death of Aram Singh was due to fire arm injuries. It is duly proved on the basis of statement made by PW-6 Hari Ram and PW-7 Tirlok Singh that Jagbir had fired at Aram Singh. The gun was recovered on the basis of disclosure statement made by Jagbir. According to FSL report, the gun recovered from Jagbir was used in the commission

of offence. Jagbir had been seen firing at Aram Singh by PW-6 Hari Ram and PW-7 Tirlok Singh. The role attributed to Ganga Ram and Sohan Pal is that they had raised *lalkara*. Thereafter Jagbir fired at Aram Singh. The prosecution has proved the case against the appellants Jagbir, Ganga Ram and Sohan Pal under Section 302 read with Section 34 IPC.

30. Now the Court will advert to the charges framed against the appellants under Section 307 IPC. The case of the prosecution is that Jagbir, Ganga Ram, Sohan Pal and Jai Pal came to the house of Dalpat. Kunwar Pal and Hari Ram had come on scooter. Hari Ram and Kunwar Pal had given *lalkara* while standing at the gate of house of Dalpat. Sohan Pal gave *lathi* blow to Dalpat. Jagbir fired a shot which passed near the neck and shoulder of Dalpat. Tej Pal blocked the way of Dalpat. Ganga Ram had fired shot in his abdomen. PW-9 Dalbir had seen Sohan Pal inflicting injuries on the wrist of Dalpat. Ganga Ram fired at Dalpat. According to PW-8 Dalpat, Jagbir also fired at him. Tej Pal had blocked the passage. However the fact of the matter is that PW-8 Dalpat is an injured witness. He is a stamped witness. Statement of PW-8 Dalpat is duly corroborated by PW-9 Dalbir. PW-10 Dr.Neerja Ajmani has deposed that the skiagram revealed radio opaque shadow on the right side of pelvis and there was fracture of underlying bones, i.e. iliac. PW-11 Dr.Hilal Ahemad has noticed four injuries on the body of Dalpat. Injuries No.1 to 3 were result of gun shot and injury No.4 was caused by blunt weapon. The probable duration was within 6 hours. PW-13 Dr.V.K. Garg deposed that Dalpat was brought to the Escorts Hospital, Faridabad. He had noticed multiple pellet punctures with active bleeding. He was subjected to X-ray. Damaged portion of intestine was removed. The injury could have caused death. The patient

was referred to Army Base Hospital, Delhi Cantt.

31. The plea taken by Jagbir is that he was going on scooter and was waylaid. He has produced DW-6 Prem Chand. DW-6 Prem Chand deposed that he was coming to his house. Jagbir was proceeding towards house of Dalpat. With the help of rope, Jagbir was waylaid. Dalpat fired a shot. Jagbir also fired a shot. Jagbir himself admitted his presence on the spot. DW-6 Prem Chand also admitted the presence of Dalpat on the spot. The plea taken by Jagbir is not believable in view of the overwhelming evidence of PW-6 Hari Ram and PW-7 Tirlok Singh who had seen Jagbir firing at Aram Singh.

32. According to the prosecution, Tej Pal had blocked the way with the help of pistol. The role attributed to Hari Ram and Kunwar Pal is that they had raised *lalkara*. Sohan Pal who had given *lathi* blow on the wrist of Dalpat and Ganga Ram had fired at Dalpat for causing serious injuries to him. The law is settled now that as far as Section 307 IPC is concerned, it is the intention not injury which is relevant. The prosecution has proved the case beyond reasonable doubt. All the appellants have been rightly convicted under Section 307 read with Section 149 IPC.

33. Their Lordships of the Supreme Court in ***Mithu Singh vs. State of Punjab, (2001) 4 Supreme Court Cases 193*** have held that to substantiate a charge under Section 302 with the aid of Section 34 it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of both. Common intention has to be distinguished from same or similar intention. An inference as to common intention shall not be readily drawn, the culpable liability can arise only if such inference can be drawn with a certain degree

of assurance. Their Lordships of the Supreme Court have held as under:-

“6. To substantiate a charge under Section 302 with the aid of Section 34, it must be shown that the criminal act complained against was done by one of the accused persons in furtherance of the common intention of the both. Common intention has to be distinguished from same or similar intention. It is true that it is difficult, if not impossible, to collect and produce direct evidence in proof of the intention of the accused and mostly an inference as to intention shall have to be drawn from the acts or conduct of the accused or other relevant circumstances, as available. An inference as to common intention shall not be readily drawn; the culpable liability can arise only if such inference can be drawn with a certain degree of assurance. At the worst Mithu Singh, accused appellant, knew that his co-accused Bharpur Singh was armed with a pistol. The knowledge of previous enmity existing between Bharpur Singh and the deceased can also be attributed to Mithu Singh. But there is nothing available on record to draw an inference that the co-accused Bharpur Singh had gone to the house of the deceased with the intention of causing her death and such intention was known to Mithu Singh, much less shared by him. Simply because Mithu Singh was himself armed with a pistol that would not necessarily lead to an inference that he had also

reached the house of the deceased or had accompanied the co-accused Bharpur Singh with the intention of causing the death of Gurdial Kaur. In our opinion, an inference as to Mithu Singh accused appellant, having shared with Bharpur Singh a common intention of causing the murder of deceased Gurdial Kaur cannot be drawn. His conviction under Section 302/34 IPC cannot be sustained and must be set aside.”

34. Their Lordships of the Supreme Court in ***Babu Ram and another vs. State of U.P. and others, (2002) 6 Supreme Court Cases 518*** have held that in order to hold an accused guilty of criminal act by reference of Section 34 IPC the Court should be able to draw an inference that the result reached was the consequence of the concerted action of the person said to be held liable. Their Lordships of the Supreme Court have held as under:-

“15. Thus, it is clear that in order to hold an accused guilty of criminal act by reference of Section 34 of the IPC the Court should be able to draw an inference that the result reached was the consequence of the concerted action of the person said to be held liable, recently, this Court has held in Mithu Singh v. State of Punjab, [2001] 4 SCC 193:-

"Common intention has to be distinguished from same or similar intention. It is true that it is difficult, if not impossible, to collect and produce direct evidence in proof of the intention of the

accused and mostly an inference as to intention shall have to be drawn from the acts or conduct of the accused or other relevant circumstances, as available. An inference as to common intention shall not be readily drawn, the culpable liability can arise only if such inference can be drawn with a certain degree of assurance."

35. Their Lordships of the Supreme Court in ***Ramaswami Ayyangar and others vs. State of Tamil Nadu, (1976) 3 Supreme Court Cases 779*** have held that "act" includes series of acts. Act of standing guard of preventing relief to the victim is also included in the "act". Their Lordships have held as under:-

"12. The contention is fallacious and cannot be accepted. Section 34 is to be read along with the preceding Section 33 which makes it clear that the "act" spoken of in Section 34 includes a series of acts as a single act. It follows that the words "when a criminal act is done by several persons" in Section 34, may be construed to mean "when criminal acts are done by several persons". 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 to otherwise facilitate the execution of the common design. 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, however, it is essential for the application of Section 34 that the person who instigates or aids the commission of the crime must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture. 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'. The essence of Section 34 is simultaneous consensus of the minds of persons participating in the criminal action to bring about a particular result. Such consensus can be developed at the spot and thereby intended by all of them. In the case before us, A-2 obviously, was acting in concert with A-3 and A-4 in causing the murder of the deceased, when he prevented PW 1 from going to the relief of the deceased. Section 34 was therefore fully attracted and under the circumstances A- 2 was equally responsible for the murder of the deceased. Under these circumstances we think the High Court was justified in convicting A-2 for the offence of murder of Kaliyaperumal with the aid of Section 34 of the Penal Code. There was absolutely no

difficulty in maintaining the convictions of A-3 and A-4 for the murder of Kaliyaperumal with the aid of Section 34 because both had mercilessly assaulted him with Aruvals on the vital parts of the body. In the case of A-2 also it is quite legitimate to hold that he had shared the common intention of A-3 and A-4 in the commission of the murder of Kaliyaperumal.”

36. Their Lordships of the Supreme Court in ***Dharam Pal and others vs. State of Haryana, (1978) 4 Supreme Court Cases 440*** have held that it may be that when some persons start with a pre-arranged plan to commit a minor offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence. Their Lordships have held as under:-

“14. It may be that when some persons start with a pre-arranged plan to commit a minor offence, they may in the course of their committing the minor offence come to an understanding to commit the major offence as well. Such an understanding may appear from the conduct of the persons sought to be made vicariously liable for the act of the principal culprit or from some other incriminatory evidence but the conduct or other evidence must be such as not to leave any room for doubt in that behalf.”

37. Their Lordships of the Supreme Court in ***Krishnan and another vs. State of Kerala, (1996) 10 Supreme Court Cases 508*** have held that even assuming that the appellant caused no injury it can be inferred that he shared common intention with the co-accused who caused the fatal injuries. Their Lordships have held as under:-

“15. Question is whether it is obligatory on the part of the prosecution to establish commission of overt act to press into service Section 34 of the Penal Code. It is no doubt true that court likes to know about overt act to decide whether the concerned person had shared the common intention in question. Question is whether overt act has always to be established? I am of the view that establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch as this section gets attracted when a criminal act is done by several persons in furtherance of common intention of all”. What has to be, therefore, established by the prosecution is that all the concerned persons had shared the common intention. Court's mind regarding the sharing of common intention gets satisfied When overt act is established qua each of the accused. But then, there may be a case where the proved facts would themselves speak of sharing of common intention : res ipsa loquitur.

16. Now, take this case, The appellant is a school teacher. He is sup-posed to be armed with a pen and not a knife. He would be normally found in his school and

not on a road at night, and that too in the company of another who is also armed with knife. Not only this, seeing the deceased coming, the appellant and the co-accused came out from behind a tree and proclaimed to the deceased they were waiting for him. Thereafter, the deceased is be- laboured, and let it be conceded, only by the co-accused. Question is whether the appellant had also the intention which had animated the co- accused in causing the death? According to me, it would definitely be permissible to draw the inference that both the accused had shared a common intention and the criminal act in question had been done in furtherance of the intention. Section 34 does not require anything more to get attracted.”

38. Their Lordships of the Supreme Court in ***Lallan Rai and others vs. State of Bihar, (2003) 1 Supreme court Cases 268*** have held that common intention can be developed at the spot. Their Lordships have held as under:-

“20. A plain look at the Statute reveals that the essence of Section 34 is simultaneous consensus of the mind of persons participating in the criminal action to bring about a particular result. It is trite to record that such consensus can be developed at the spot. The observations above obtain support from the decision of this Court in Ramaswami Ayyangar & Ors. v. State of Tamil Nadu [AIR 1976 SC 2027].

xxx xxx xxx

22. *The above discussion in fine thus culminates to the effect that the requirement of statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot absolve the accused though the same however depends upon the fact-situation of the matter under consideration and no rule steadfast can be laid down therefor.”*

39. Their Lordships of the Supreme Court in ***Asoke Basak vs. State of Maharashtra and others, (2010) 10 Supreme Court Cases 660*** have reiterated the principles of Section 34 of IPC as under:-

“24. We shall now examine whether the appellant is vicariously liable for the aforementioned offence with the aid of Section 34 of the IPC. The essence of liability under Section 34 IPC is the existence of a common intention. A common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. In Ramaswami Ayyangar & Ors. Vs. State of Tamil Nadu, this Court had observed that the essence of Section 34 IPC is simultaneous of the minds of persons participating in the criminal action to bring about a particular result. It is true that to attract Section 34, no overt act is needed on the part of the accused if he shares the common

intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention. Nonetheless, Section 34 IPC clearly envisages pre-concert or pre- planning, which may even develop at the spur of the moment but such plan must precede the act constituting the offence. It is equally true that it may not be possible in every case to have direct evidence of a common intention and it may have to be inferred from the facts and circumstances of each case.”

40. Learned counsel for the petitioner in the revision petition have vehemently argued that sentence awarded to the appellants be enhanced and adequate compensation be awarded to the heirs of the deceased. However, we see no reason for enhancement of sentence or award of compensation. Accordingly the petition (CRR-242-2004) filed by the petitioner (complainant) is dismissed.

41. There is no merit in the appeals and the same are dismissed. The appellants are on bail. Police is directed to take them into custody immediately to undergo remaining sentence imposed upon them.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

April 24, 2019.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No