

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

(1) CRA-D-416-DB of 2003

Kuldeep Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(2) CRA-D-419-DB of 2003 (O&M)

Ragbir Singh

.... Appellant

Versus

State of Punjab

..... Respondent

(3) CRR-894 of 2004

Netar Singh

.... Petitioner

Versus

Ragbir Singh and others

..... Respondents

**Reserved on : 17.07.2019
Date of decision : 25.07.2019**

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

Present: Mr. Vinod Ghai, Senior Advocate, with
Ms. Kanika Ahuja, Advocate,
for the appellant in CRA-416-DB of 2003.

Mr. Harsh Chopra, Advocate,
for the appellant in CRA-D-419-DB of 2003.

Mr. Vikas Bahl, Senior Advocate, with
Mr. Nikhil Sabharwal, Advocate,
for the petitioner in CRR-894 of 2004.

Mr. Suveer Sheokand, Addl. A.G., Punjab.

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-416-DB of 2003, CRA-D-419-DB of 2003 and CRR-894 of 2004, therefore, these are taken up together and being disposed of by a common judgment.

2. CRA-D-416-DB of 2003 and CRA-D-419-DB of 2003 are instituted against judgment and order dated 14.03.2003, rendered by learned Sessions Judge, Fatehgarh Sahib, in Sessions Case No. 46T of 22.11.1998/08.06.2001. Appellants Kuldeep Singh and Raghbir Singh along with co-accused Harminder Singh were charged with and tried for the offences punishable under Sections 120-B, 302/34 IPC. Appellant Raghbir Singh was also charged with and tried for the offence punishable under Section 27 of the Arms Act. Appellant Kuldeep Singh was convicted under Section 302/34 IPC and appellant Raghbir Singh was convicted under Section 302 IPC and Section 30 of the Arms Act. However, co-accused Harminder Singh was acquitted of the charges framed against him. Appellant Kuldeep Singh was sentenced under Section 302/34 IPC to undergo life imprisonment and to pay a fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months. Appellant Raghbir Singh was sentenced under Section 302 IPC to undergo life imprisonment and to pay a fine of ₹ 5,000/- and in default of payment of fine to further undergo rigorous imprisonment for six months, and under Section 30 of the Arms Act to undergo rigorous imprisonment for six months. Both the sentences passed against appellant Raghbir Singh were ordered to run concurrently.

3. CRR-894 of 2004 has been filed by complainant Netar Singh seeking conviction and sentence of co-accused Harminder Singh and for grant of compensation to the legal heirs of deceased Kesar Singh.

4. The case of the prosecution, in a nutshell, is that Netar Singh (PW.4) lodged complaint Ex.PF to the effect that his mother Amar Kaur was elected as Sarpanch in Panchayat elections by defeating Amandeep Kaur wife of Harminder Singh alias Lali accused. The election was held on 21.06.1998. On 24.06.1998, Raghbir Singh, Harminder Singh, Baljit Singh and Amrik Singh, all residents of Buga Kalan, inflicted injuries to Chetan Singh brother of the complainant. FIR No. 37 dated 25.06.1998 under Sections 323/324/34 IPC was registered at Police Station Amloh. Later on, offence under Section 326 IPC was added. Challan was put up against these persons in the court of SDJM, Amloh on 06.10.1998. The accused got anticipatory bail from the court of Additional Sessions Judge, Fatehgarh Sahib. On 07.10.1998 at about 5.30 PM, the complainant was present at the shop of Sohan Singh Rosha. Amrik Singh, his cousin, also came on the spot. In the meantime, Kesar Singh, brother of the complainant, came in the grain market. He was standing on the road in front of tea shop. A Maruti car bearing registration No. PB-23A-4577 came from the side of village Buga Kalan. Kuldeep Singh was driving the car. His brother Raghbir Singh was sitting with him. Kuldeep Singh stopped his car parallel to the brother of the complainant. He raised lalkara that Kesar Singh should be taught a lesson for getting the case registered against his brother. In the meanwhile, Raghbir Singh accused came out of the car. He fired at Kesar Singh from his revolver with intention to kill him. Kesar Singh fell down on the ground.

Kuldeep Singh and Raghbir Singh escaped from the spot. Complainant and Amrik Singh came near Kesar Singh. They found that Kesar Singh had already died. The occurrence was also witnessed by Baldev Krishan. FIR Ex.PF/2 was recorded by ASI Baldev Singh. The investigation was conducted by Inspector Harbans Singh. He went to the spot. Inquest proceedings were completed. Body was sent for post mortem examination. According to the opinion of the doctor, the death was caused due to shock and haemorrhage as a result of gun shot injuries. Accused Raghbir Singh got recovered one .32 bore revolver. The investigation was completed and challan was put up after completing all the codal formalities.

5. The prosecution examined a number of witnesses. The accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. They also examined four witnesses in their defence.

6. The appellants were convicted and sentenced, as noticed above. Hence, these appeals and revision petition.

7. Learned counsel appearing on behalf of the appellants have vehemently argued that the prosecution has failed to prove its case. Learned counsel appearing for the State has supported the judgment and order of the learned Court below. Learned counsel appearing on behalf of the complainant in the revision petition has argued that in view of the evidence available on record, co-accused Harminder Singh is also liable to be convicted and sentenced. He further argued that family of deceased Kesar Singh be awarded adequate compensation.

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

9. PW.1 Dr. Karamjit Singh conducted the post mortem examination on the body of Kesar Singh. He found following injuries on his person :-

- (1) Smooth circular wound with inverted margins measuring 0.5 cm diameter on the left side maxillary area 8 cm in front of left ear. On probing traversing path showed the fracture of right canine and premolar tooth and emerging out on the right side of the face near angle of mouth. The wound of exit was measuring 3 cm x 2 cm with averted margins. Bleed was present through mouth, nose and ear.
- (2) Smooth circular wound measuring 0.5 cm diameter with inverted margins on frontal aspect of upper part of left side of chest, with the depth of wound with brobe showed on the dissection rupture of left lung and heart and traverse the path to be embeded in the back side of thoracic vertebral column and bullet was taken out.
- (3) Smooth circular wound three in number with inverted margins measuring 0.5 cm diameter each just adjacent to injury No.2 on probing wounds showed the path traversing skin muscles deep and emerging out from back portion of upper part of left deltoid and the wounds of exit measuring 1 cm diameter each with averted margins.

In his opinion, all the injuries were ante mortem in nature and were sufficient to cause death in ordinary course of nature. The cause of death was shock and haemorrhage resulting from gun shot injuries. The time elapsed between injuries and death was instantaneous and between death and post mortem was within 24 hours.

10. PW.1 Dr. Karamjit Singh died and his cross-examination could not be completed. The prosecution got examined PW.12 Dr. B.S. Chhabra.

He testified that on 07.10.1998, he was posted as SMO, Incharge Civil Hospital, Amloh. He received police request Ex.PB. He brought the original post mortem report of Kesar Singh. According to him, it was in the handwriting of Dr. Karamjit Singh. He had died. He was working under him. He was familiar with his handwriting and signatures. According to the record, Dr. Karamjit Singh conducted post mortem examination of Kesar Singh on 08.10.1998. After seeing the injuries given in the post mortem report, he also opined that the injuries were ante mortem in nature and were sufficient to cause death in the ordinary course of nature. The cause of death was shock and haemorrhage resulting from gun shot injury. In his cross-examination, he deposed that the track of injury No.1 as described in post mortem report was from upward to downward. Same was the case in injury No.3, as described in the post mortem report.

11. PW.3 Iqbal Singh deposed that he was posted as Revenue Patwari in the area of village Buga Kalan on 15.10.1998. He prepared site plan Ex.PE.

12. PW.4 Netar Singh is the eye witness. According to him, in the Panchayat elections held on 21.06.1998, his mother Amar Kaur contested the election of Sarpanch. She contested against Amandeep Kaur wife of Harminder Singh. His mother won the elections. On 24.06.1998, Raghbir Singh alias Pappa, Harminder Singh alias Lalli son of Nachhatar Singh, Daljit Singh son of Hardev Singh, Amrik Singh son of Rattan Singh caused injuries to his brother Chetan Singh. FIR No. 37 under Sections 323/324/34 IPC was registered at Police Station Amloh. Thereafter, the offence was converted under Section 326 IPC. The accused were released on bail. On

07.10.1998 at about 5.30 PM, when he was sitting near the paddy heap at the shop of Sohan Singh Rosha, Commission Agent. Amrik Singh was also sitting with him. His brother Kesar Singh was also present in the grain market. He was at a distance of 22-23 yards from them. In the meantime, a Maruti car, being driven by Kuldeep Singh, came on the spot. Raghbir Singh was sitting with him. They came and stopped the car parallel to his brother. Kuldeep Singh raised lalkara that his brother should be taught a lesson for lodging case against Raghbir Singh. Raghbir Singh came out of the car. He fired five shots at his brother Kesar Singh with an intention to murder him. Four shots were fired at the chest of Kesar Singh. Fifth shot hit his left cheek. Kesar Singh collapsed. The accused ran away from the spot. He and Amrik Singh went near Kesar Singh. Kesar Singh had succumbed to his injuries. Motive behind the occurrence was the previous enmity between the parties. The police was informed. His statement Ex.PF was recorded. In his cross-examination, he deposed that the place of occurrence was at a distance of $\frac{3}{4}$ kilometer from their house. The police had met them at a distance of about 4 killas from the place of occurrence. They remained at the spot for considerable time. SI Harbans Singh had scribed the recovery memo. He had not gone with the dead body. He went to the hospital in the morning.

13. Statement of PW.4 Netar Singh is duly corroborated by PW.5 Amrik Singh, with regard to the manner in which accused Kuldeep Singh came on the spot with accused Raghbir Singh. He deposed that Kuldeep Singh raised lalkara that Kesar Singh should be taught a lesson for registering false case against accused Raghbir Singh. Raghbir Singh came

out of the car and fired shots at Kesar Singh with intention to kill him. Four shots hit the left side of the chest and one hit on left cheek of Kesar Singh. Kesar Singh collapsed. The police recorded statement of Netar Singh. Police took into possession blood stained earth from the spot. In his cross-examination, he deposed that there were 8-10 more shops on the spot. Since Kuldeep Singh had raised lalkara from inside the car, therefore, there was no question to show this point specifically in the site plan.

14. PW.6 Bikramjit Singh testified that on 07.10.1998, he had gone to have a round of the paddy crop in his field. The electric motor of Baljit Singh was adjoining his electric motor. Electric motor of Harminder Singh was quite near the electric motor of Baljit Singh. At about 3.30 PM, he was in his field. Malkeet Singh son of Sujan Singh came to him. He had some work with him. He and Malkeet Singh started for the village. When they reached on the turning of the Pahi at a distance of 5-6 yards near the electric motor of Baljit Singh, he saw a white colour car. Harminder Singh alias Lali, Raghbir Singh alias Pappa and Kuldeep Singh accused were sitting at a distance of 15-18 yards from the Pahi in the field. Harminder Singh alias Lali was saying that they would not face sentence in case under Section 326 IPC. They were hatching conspiracy.

15. Statement of PW.6 Bikramjit Singh was discarded by the trial court.

16. PW.14 Harbans Singh Inspector recorded statement, Ex.PF, made by PW.4 Netar Singh. FIR was registered. He prepared inquest report. He sent the dead body for post mortem examination. He got prepared rough site plan Ex.PN. Statements of PWs were recorded by him. He deposited the

case property with MHC. Accused were arrested. Accused Raghbir Singh produced .32 bore revolver having capacity of seven cartridges, along with 11 live cartridges and licence. The revolver Ex.P1, cartridges Ex.P2 to Ex.P6 and licence were taken into possession.

17. PW.15 Sukhbir Singh deposed that the Arms licence, .32 bore revolver and .12 bore DBBL gun were in the name of Raghbir Singh.

18. DW.1 Surjit Singh produced photo copy of application dated 23.05.1996, Ex.DA. It was moved qua illegal possession of *shamlat* land by Nirmal Singh son of Naranjan Singh. In his cross-examination, he admitted that this application was not marked in his presence nor he was present or posted at that time in the office of D.C. Fatehgarh Sahib.

19. DW.2 Balbir Singh deposed that on 23.05.1996, an application was moved by Harminder Singh Sarpanch against Bhupinder Kaur wife of Malkiat Singh of village Bhuga who was working as Supervisor in Aanganwari Bhuga, regarding misappropriation of material and food products.

20. DW.4 Prem Singh testified that he had not brought the proceeding book pertaining to 01.06.1996 to 15.07.1996, as the same was not given by the accused to the present Sarpanch after the present Sarpanch won the election.

21. According to the Chemical Examiner report, Ex.PY, blood was found on exhibits I and II (E), and stains were found on exhibit II (A), II (B), II (C) and II (D).

22. As per the Forensic Science Laboratory report, Ex.PX, six .32 inch K.F. cartridge cases marked C/1 to C/6 contained in parcel 'A' were

fired from .32 inch Arminius revolver No. 881613. However, no definite opinion could be given regarding firing of one .32 inch lead bullet marked B/1 from .32 inch Arminius revolver No. 881613 due to lack of sufficient individual characteristic marks.

23. PW.4 Netar Singh and Amrik Singh had seen appellant Raghbir Singh firing at Kesar Singh. Kesar Singh collapsed on the spot. According to the post mortem report, the cause of death was shock and haemorrhage resulting from gun shot injuries. All the injuries were ante mortem in nature and sufficient to cause death in ordinary course of nature. PW.1 Dr.Karamjit Singh, who conducted post mortem examination, could not be cross-examined due to his death. However, PW.12 Dr. B.S. Chhabra was examined by the prosecution. He supported the statement of PW.1 Dr.Karamjit Singh made in his examination-in-chief.

24. The motive attributed to the appellants is that the complainant party had lodged an FIR against them. They obtained bail in that case and on the next day, they came on the spot. Appellant Raghbir Singh fired at Kesar Singh. He was the license holder of .32 bore revolver. He produced the revolver before the police. It was sent to FSL for examination. According to the FSL report, Ex.PX, six .32 inch K.F. cartridge cases marked C/1 to C/6 contained in parcel 'A' were fired from .32 inch Arminius revolver No. 881613.

25. Now, we advert to the role attributed to appellant Kuldeep Singh. According to PW.4 Netar Singh, Kuldeep Singh after stopping the car raised lalkara. Thereafter, appellant Raghbir Singh came out of the car and fired five shots at his brother Kesar Singh. In his cross-examination, he

admitted that the site plan was prepared by the police at his instance. It was scribed by Harbans Singh. He had disclosed to the police the place where Kuldeep Singh had stopped the car. Attention of the witness was drawn towards the site plan Ex.DA, wherein the place where the car was stopped and Raghbir Singh came out and fired shots is mentioned. However, it is not mentioned that the car was stopped by Kuldeep Singh. He had shown that point to the police where Kuldeep Singh had raised lalkara. Attention of the witness was drawn towards the site plan Ex.DA where the said place is not shown. He had shown the place B from where the car was driven away by the accused after the occurrence. In the site plan, name of Kuldeep Singh was not mentioned. PW.5 Amrik Singh had deposed that Kuldeep Singh raised lalkara and Raghbir Singh fired at Kesar Singh. In his cross-examination, he deposed that Kuldeep Singh had raised lalkara from inside the car, therefore, there was no question to show this point specifically in the site plan. He was confronted with site plan Ex.PE, where name of Kuldeep Singh was not recorded. A court question was put to him whether he had shown the place to the Patwari from where Kuldeep Singh raised lalkara. His answer was that he had told the Patwari about the place where he had stopped the car but not about the place where he had raised the lalkara. We have gone through the site plans Ex.PE and Ex.DA. Name of appellant Kuldeep Singh has not been shown in any of the plan where he had allegedly stopped the car and raised the lalkara. No role other than the raising of lalkara has been attributed to him. No weapon of offence was ever recovered from him. Kesar Singh was shot by appellant Raghbir Singh.

26. In **Ramashish Yadav and others Vs. State of Bihar, (1999) 8**

Supreme Court Cases 555, their Lordships of the Supreme Court have held that for constituting offence under Section 34 IPC, prior concert or meeting of minds is essential. It can be gathered from the conduct of the accused during the course of commission of the offence. Their Lordships have further held that the common intention requires a pre-arranged plan and it presupposes prior concert, therefore, there must be prior meeting of minds. Their Lordships have held as under :-

“3. Coming to the question of applicability of Section 34 for the murder of Tapeswar, we find from the evidence of the three eye witnesses that while Ram Pravesh Yadav and Ramanand Yadav caught hold of Tapeswar, accused Samundar Yadav and Sheo Layak Yadav came with gadasa and gave blows on the head of Tapeswar, as a result of which Tapeswar died. Section 34 lays down a principle of joint liability in the 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 the doing of a criminal act in furtherance of such intention. The distinct feature of Section 34 is the element of participation in action. The common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. It requires a prearranged plan and it presupposes prior concert. Therefore, there must be prior meeting of minds. The prior concert or meeting of mind may be determined from the conduct of the offenders unfolding itself during the course of action and the declaration

made by them just before mounting the attack. It can also be developed at the spur of the moment but there must be pre-arrangement or premeditated concert. This being the requirement of law for applicability of Section 34 IPC, from the mere fact that accused Ram Pravesh Yadav and Ramanand Yadav came and caught hold of Tapeashwar, whereafter Samundar Yadav and Sheo Layak Yadav came with gandasa in their hands and gave blows by means of gandasa, it cannot be said that the accused Ram Pravesh Yadav and Ramanand Yadav shared the common intention with accused Samundar Yadav and Sheo Layak Yadav. Consequently, accused Ram Pravesh Yadav and Ramanand Yadav cannot be held guilty of the charge under Section 302/34 IPC but accused Samundar Yadav and Sheo Layak Yadav did commit the offence under Section 302/34, having assaulted deceased Tapeswar on his head by means of gandasa on account of which Tapeswar died. The accused Ram Pravesh Yadav and Ramanand Yadav are, therefore, acquitted of the charges levelled against them and they be set at liberty forthwith. So far as the two other appellants are concerned, namely, Ramashis Yadav and Sukhdeo Yadav, they have merely caused injury to the informant by means of a knife and for causing such injury they can only be convicted under Section 324/34 IPC and are sentenced to imprisonment for two years. But they have already been in custody for more than seven years by now, they should also be set at liberty forthwith. In the net result,

therefore, the conviction of appellant Ram Das Yadav under Section 302 IPC and sentence of imprisonment for life is upheld and his appeal stands dismissed. Conviction of all other appellants under Section 302/149 is set aside. Conviction of appellants Samundar Yadav and Sheo Layak Yadav under Section 302/34 IPC and sentence of imprisonment for life is upheld. Appeal by them, therefore, stands dismissed. Accused Ram Parvesh and Ramanand are acquitted of the charges and be set at liberty forthwith. Accused Ramashis Yadav and Sukhdeo Yadav are convicted under Section 324/34 IPC and sentenced to two years' R.I. and since they have already been in custody for more than seven years, they are directed to be set at liberty forthwith."

27. Their Lordships of the Supreme Court in **Dani Singh and others Vs. State of Bihar, (2004) 13 Supreme Court Cases 203**, have explained the meaning of term "common intention" as under :-

"20. "Common intention" implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Under this Section a pre-concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances of the situation. Though common intention may develop on the spot, it must, however, be anterior in point of time to the commission of offence showing a pre-arranged

*plan and prior concert. (See **Krishna Govind Patil v. State of Maharashtra, AIR 1963 SC 1413**). In **Amrit Singh v. State of Punjab (1972) 4 SCC (N) 42**, it has been held that common intention pre-supposes prior concert. Care must be taken not to confuse same or similar intention with common intention; the partition which divides their bonds is often very thin, nevertheless the distinction is real and substantial, and if overlooked will result in miscarriage of justice. To constitute common intention, it is necessary that intention of each one of them be known to the rest of them and shared by them. Undoubtedly, it is a difficult thing to prove even the intention of an individual and, therefore, it is all the more difficult to show the common intention of a group of persons. But however difficult may be the task, the prosecution must lead evidence of facts, circumstances and conduct of the accused from which their common intention can be safely gathered. In **Maqsoodan v. State of U.P., (1983) 1 SCC 218** it was observed that prosecution must lead evidence from which the common intention of the accused can be safely gathered. In most cases it has to be inferred from the act, conduct or other relevant circumstances of the case in hand. The totality of the circumstances must be taken into consideration in arriving at a conclusion whether the accused had a common intention to commit offence for which they can be convicted. The facts and circumstances of cases vary and each case has to be decided keeping in view of the facts involved. Whether an act is in*

*furtherance of the common intention is an incident of fact and not of law. In **Bhaba Nanda Sarma v. State of Assam, (1977) 4 SCC 396** it was observed that prosecution must prove facts to justify an inference that all participants of the acts had shared a common intention to commit the criminal act which was finally committed by one or more of the participants. Mere presence of a person at the time of commission of an offence by his confederates is not, in itself sufficient to bring his case within the purview of Section 34, unless community of designs is proved against him [See **Malkhan Singh v. State of U.P., (1975) 3 SCC 311**]. In the Oxford English Dictionary, the word "furtherance" is defined as 'action of helping forward'. Adopting this definition, Russell says that "it indicates some kind of aid or assistance producing an effect in future" and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken, for the purpose of effecting that felony. (Russell on Crime 12th Edn. Vol.I pp.487 and 488). In **Shankarlal Kacharabhai v. State of Gujarat, AIR 1965 SC 1260** this Court has interpreted the word "furtherance" as 'advancement or promotion'."*

28. In **Nagaraja Vs. State of Karnataka, (2008) 17 Supreme Court Cases 277**, their Lordships of the Supreme Court have held that for invoking the provisions of Section 34 IPC, at least two factors must be established; (1) common intention; and (2) participation of the accused in the commission of an offence. Their Lordships further held that although no

overt act is required to be attributed to the individual accused but then before a person is convicted by applying the doctrine of vicarious liability not only his participation in the crime must be proved but presence of common intention must be established. Their Lordships have held as under :-

“18. For invoking the provisions of Section 34 of the IPC, at least two factors must be established; (1) common intention, and (2) participation of the accused in the commission of an offence. For the aforementioned purpose although no overt act is required to be attributed to the individual accused but then before a person is convicted by applying the doctrine of vicarious liability not only his participation in the crime must be proved but presence of common intention must be established. It is true that for proving formation of common intention, direct evidence may not be available but then there cannot be any doubt whatsoever that to attract the said provision, prosecution is under a bounden duty to prove that participants had shared a common intention. It is also well settled that only the presence of the accused by itself would not attract the provisions of Section 34 of the I.P.C. Other factors should also be taken into consideration for arriving at the said conclusion. The accused persons were not related to each other; they did not have any family connection; they have different vocations. It has not been established that they held any common animosity towards the deceased.”

State of Madhya Pradesh, (2010) 8 Supreme Court Cases 407 have laid down the principles how the “common intention” is to be inferred. Their Lordships have held as under :-

“36. Referring to the facts of this case, the short question which arises for adjudication in this appeal is whether the appellant Virendra Singh can be convicted under Section 302 with the aid of Section 34 IPC. Under the Indian Penal Code, the persons who are connected with the preparation of a crime are divided into two categories: (1) those who actually commit the crime, i.e. principals in the first degree; and (b) those who aid in the actual commission, i.e. principals in the second degree. The law does not make any distinction with regard to the punishment of such persons, all being liable to be punished alike.

37. Under the Indian Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Indian Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled, i.e., the mental element

or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

39. The common intention postulates the existence of a pre-arranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinized by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver, than, the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

41. The essence of Section 34 IPC is a

*simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. Russell in his celebrated book **Russel on Crime**, 12th Edn., Vol. 1 indicates some kind of aid or assistance producing an effect in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step, intentionally taken for the purpose of effecting that felony. It was observed by Russell that any act of preparation for the commission of felony is done in furtherance of the act.*

42. *Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a pre-arranged and pre-meditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the pre-meditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. In fact, the section is intended to cover a case where a number of persons act together and on the facts of the case it is not possible for the prosecution to prove as to which of the persons who acted together actually committed the crime. Little or no distinction exists between a charge for an*

offence under a particular section and a charge under that section read with Section 34.”

30. Since the statement of PW.6 Bikramjit Singh has rightly been discarded by the trial court and the prosecution has failed to prove criminal conspiracy, therefore, the prayer of complainant Netar Singh in Criminal Revision No. 894 of 2004 seeking conviction and sentence of co-accused Harminder Singh does not survive. Further, no ground has been made out for grant of compensation to the legal heirs of deceased Kesar Singh. Accordingly, Criminal Revision No. 894 of 2004 is dismissed.

31. In view of the above discussion, the prosecution has failed to prove its case against appellant Kuldeep Singh. However, the case against appellant Raghbir Singh has been duly proved beyond reasonable doubt.

32. Accordingly, CRA-D-416-DB of 2003, filed by Kuldeep Singh, is allowed. He is already on bail. His bail bond and surety bond are discharged. His conviction and sentence, as recorded by the trial court, for the offence under Section 302/34 IPC, are set aside.

33. CRA-D-419-DB of 2003, filed by Raghbir Singh, is dismissed. He is on bail. His bail bonds and surety bonds are cancelled. He is directed to surrender before the concerned Chief Judicial Magistrate forthwith to undergo remaining part of his sentence.

(RAJIV SHARMA)
JUDGE

July 25, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No