



2026:AHC:24070-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 2184 of 1985

Krishna Kumar

.....Appellant(s)

Versus

State

.....Respondent(s)

Counsel for Appellant(s)	:	P.N.Misra, R.Asthana, Rama Shanker Mishra
Counsel for Respondent(s)	:	D.G.A.

Court No. - 46

HON'BLE SIDDHARTH, J.

HON'BLE JAI KRISHNA UPADHYAY, J.

1. Heard Sri Rama Shanker Mishra, learned counsel for appellant; Sri Sushil Kumar Pandey, learned AGA for State and perused the judgment and record of the trial court.

2. The present criminal appeal has been filed against the judgment and order dated 20.08.1985 passed by Addl. Sessions Judge, Shahjahanpur, in Sessions Trial No. 642 of 1984 convicting the appellant for life imprisonment under section 302/34 of I.P.C.

3. The complainant, Ram Chander, son of Late Thakuri, P.W.-2, Ram Ratan, son of Late Thakuri and accused, Puttan, son of Rashid Khan, Ram Lal son of Pohpi and Krishan Kumar, son of Gulab are the residents of the same village. The deceased, Thakuri, son of Ballu is the real father of the complainant, Ram Chander and P.W.2, Ram Ratan. The deceased, Thakuri, purchased the land numbering 564 situate in village Paina Buzurg and the sale deed of the land in question was registered in favour of Smt. Brij Rani, the wife of the deceased. The accused, Puttan, was the *pataidar* of this agricultural land. Accused, Puttan, wanted to grab the land, Puttan also used to abuse and threatened. Accused, Puttan, also challenged that he would not allow to plough the land. Accused, Puttan, also threatened to kill. The accused persons viz Puttan, Ramlal and Krishna Kumar are friends. The accused persons threatened three months before of this occurrence, Thakuri and the report about this occurrence was lodged at P.S.Sindhaali.

4. On the day of occurrence i.e., 25.9.1984 at about 11:00 p.m., in the night

Thakuri was sleeping at his *chaupal*, situate in village, Paina Buzurg. Ram Chander and Ram Lal, sons of deceased, Thakuri, were also present on the *chaupal*. Bhimma was also there. Sri Layak Ram, the maternal uncle of the complainant was also present at the *chaupal*. A lantern was burning. Layak Ram was telling the stories. The accused, Puttan, armed with gun Ram Lal and Krishan Kumar armed with country-made pistols reached on the *chabutra* of the *chaupal*. Puttan challenged to keep quiet otherwise all would be shot dead. Puttan fired on Thakuri. Accused Ram Lal also fired. Accused Krishan Kumar said shoving country made pistol that Thakuri was only to be killed. The accused, Krishan Kumar, also challenged to keep quiet. Thakuri received gunshot injuries on his person and died on the spot. The people of the locality reached to the place of occurrence after hearing alarm of the P.Ws. The accused persons ran away towards the south.

5. The complainant, Ram Chander, prepared written report of this occurrence which is marked as Ext.Ka-1. The written report Ext.Ka-i was submitted at P.S., Sindheuli, on 26.9.84. The chick FIR against crime no.277/84 was prepared under section 302 IPC which is Ext.Ka-15, against accused Puttan, Ram Lal and Krishan Kumar. The entries were also made in the relevant G.D. dated 26.9.84 at 2:30 a.m. which is Ext.Ka-16.

6. The investigation of this case was entrusted to Sri Dinesh Singh (S.I.) who started with the investigation on the same day. The I.O., Sri Singh reached to the place of occurrence i.e. the village Paina Buzurg and prepared the inquests report Ext.Ka-3, Naqsha Lash Ext.Ka-4, police form no.13 Ext.Ka-5, police form no.33 Ext.Ka-6, sample of seal Ext.Ka-7, site plan Ext.Ka-8, memo of lantern Ext.Ka-9, memo of torch Ext.Ka-10, memo of Tikli Ext.Ka-11, memo of blood stained earth and simple earth Ext.Ka-12.

7. The dead body of Thakuri was taken into possession and was sealed on the spot. The dead body of Thakuri in a sealed cover was handed over to constable, Chabinath, no.186 C.P. and village *chaukidar* for conducting the post mortem. The constable, Chabinath, brought the dead body to mortuary Shahjahanpur on 26.9.84 at about 11 a.m. The post mortem of the dead body of Thakuri was conducted on 26.9.64 at about 3 p.m. The result of the post mortem and the clothes of the deceased were also deposited at P.S.Sindhauili by constable Chabinath the same day after returning from Shahjahanpur. The charge sheet Ext.ka-14 under section 302 IPC was submitted against all the accused persons on 19.10.84 by Sri Dinesh Singh

S.I. (I.O.) after completing the investigation.

8. The prosecution has produced and examined Sri Ram Chander son of late Thakuri R/D village Paina Buning P.S.Sindhauli as P.W.1 against the accused persons. P.W.1 has stated that his house faced east and situated in village Paina Busurg. There is also *Rasta* towards east of the said house and there is a *chabutra* adjacent to this *rasta*. There is a *chapper* towards east of that *chabutra* and there is also a room. The room including the *chapper* are called as *chaupal*. The house of accused, Ram Lal, situates towards north of the above *chaupal*. There is a vacant land of the complainant towards south of the said *chaupal*. This vacant land is under the possession of the complainant. There was a tussle between accused, Ram Lal, and the members of the complainant about this land.

9. This P.W.-1 has also stated that his father purchased agricultural land numbering 564 situate in village Paina Buzurg in the name of his mother Smt. Brij Rani. The sale deed was also executed and registered of the land in question before this occurrence. This land was being ploughed by accused Puttan on Batai before this sale deed. The accused Puttan, wanted to grab this land. Accused, Puttan, also threatened to kill Thakuri. This P.W. has also stated that all the accused persons are the residents of his village and are friends among themselves, and also belong to one group. This P.W. has also stated on oath that 2 or 3 months before this occurrence, the accused persons abused and threatened. The report of this occurrence was lodged at P.S.Sindhauli. I.O., has also stated that on the day of occurrence i.e. 25.9.84 at about 11:00 p.m. the accused persons armed with g fire arm came on their *chaupal*. A lantern was burning and the maternal uncle, Layak Ram, was telling the stories. Bhimma, his brother, Ram Lal, were also present at the *chaupal*, at 11:00 p.m. This P.W. has also stated that he was also having a torch in his hand. Accused, Puttan, fired with his gun and Ram Lal fired with his country-made pistol at his father. The accused, Krishan Kumar, who was armed with country made pistol said showing his pistol that Thakuri was to be killed. This accused also challenged to keep quiet. All the three accused persons ran away towards south. The people of the locality reached to the place of occurrence after hearing the alarm. This P.W. has also stated that he prepared the written report of this occurrence. The written report has also been proved by this P.W. which is marked as Ext.Ka-1. This P.W. has also stated that he went to P.S.Sindhauli along with village *Chaukidar* to lodge the report of this occurrence. The written report was submitted at P.S.

Sindhauli. This P.W. has also filed original copy of the sale deed in question. This P.W. has also stated that P.W. Bhimma is the cousin of his father deceased, Thakuri, is also and accused, Ram Lal, and accused cousin brother of P.W. Bhimma. This P.W. has also stated that Bhimma has said that he does not want to give evidence.

10. The prosecution has also produced and Ram Ratan as P.W.-2 son of of late Thakuri, resident of village Paina Buzurg, P.S.Sindhauli, Distt. Shahjahanpur. This P.W.2 has stated and supported fully the version of P.W.1 Sri Ram Chander, his brother. This P.W. has also stated that on the day of occurrence he was also present at the Chaupal along with his brother, Ram Chander, maternal uncle and Bhisma and his father Thakuri. The lantern was burning. The maternal uncle was saying stories. This P.W. has stated that he heard the nhat of the accused at about 11 p.m. and his brother Ram Chander flashed torch P.W. has stated that he saw the accused Puttan Ram Lal and Krishan Kumar standing near the chabutra of the chaupal. The accused Puttan challenged and asked not to flash the torch. Accused Puttan also challenged that no body should make hue and cry otherwise they would be shot dead accused, Puttan, was armed with gun and accused Ram Lal and The Krishan Kumar were armed with country made pistols. The accused Puttan and Ram Lal fired at his father with the gun and country made pistol. The accused, Krisha Kumar, said that Thakuri was to be killed. The accused, Krishan Kumar, also challenged that if any body would make noise he would be shot dead. The accused persons ran away towards south. The people of the locality reached to the place of occurrence after hearing the alarm. This P.W. has also stated that whole of the prosecution story was narrated to the villagers. This P.W. has also stated that his brother Ram Chander prepared the written report of this occurrence in the light of the lantern which was burning at the time of occurrence.

11. The prosecution has also produced and examined Dr. A.S.Gupta, Medical Superintendent, Police Lines Shahjahanpur as P.W.3 This P.W. has stated on oath that he was also posted as Medical Superintendent on 26.9.84 in Police Lines Shahjahanpur and on the same day at 3 p.m. the post mortem of Thakuri son of Ballu was conducted by him. This P.W. has also stated that the dead body of Thakuri, was presented before me in a selaed bundle by constable Chabinath and Village Chaukidar and the dead body was also identified by them. This P.W. has also stated that the deceased was aged about 50 years, and his murder was committed at about 3-4 days before. The

Dr. also proved post mortem report which is marked as Ext, Ka-2,. This P.M. has also proved pellets Ext. 1, envelop Ext. 2, blood stained Chadar Ext. 3, Baniyan Ext.7 and the sample of seal Ext.5. The Dr. found the following ante mortem injuries at the time of post mortem on the dead body of Thakuri.

12. The age of the deceased, Thakuri, was about 50 years, and he was man of average built body. Rigor mortis present both lower and upper limb. Abdomen distended. The Doctor found the following ante mortem injuries on his person:

(i) One gunshot wound 15 cm x 3 cm x skull cavity of entry, directed towards right and outwards on the left side of neck extending from the upper part of and left side head-left side of neck to the left side of head 1/4 cm below the left ear. Brain matter protruding out of the wound. Wadding pieces and 48 small metallic pellets found embedded in the brain tissue. Margins inverted and ecchymosed. Surrounding skin is scorched, (2) One adjacent (sic) of scalp/gunshot wounds-4 cm x 4 cm x chest cavity deep and directed backwards on the left side of outer part chest at 5 O'clock position 3 cm below and away from left nipple. Margins inverted, ecchymosed. Surrounding skin scorched and tattooed.

13. On internal examination the Dr. Gupta found that left lung was lacerated and covered with blood clots. 2 litres of clotted blood present in the chest cavity. The stomach contained 4 cm of partly digested food material. In the left lung wadding pieces and 17 small pellets were found. In the small intestines and big intestines faecal matter was present.

14. In the opinion of the Dr. Gupta, the death occurred due to shock and hemorrhage as a result of above noted ante mortem injuries.

15. The prosecution has also produced and examined constable 186 O.P. Chabinath of P.5. Sindhauli as P.W.4 who proved its case. This P.W. has stated on oath that he was posted at P.S. Sindhauli on 25/26.9.84. This P.W. has also stated that the dead body of Thakuri was handed over to him and village Chaukidar in a sealed cover. Thakuri was brought to mortuary Shahjahanpur on 26.9.84 at about 11:00 am. The dead body was presented before the Dr. at 3 p.m. in a sealed cover for conducting the post mortem on the dead body.

16. This P.W. has also stated that sealed envelop and sealed bundle were handed over to him by the doctor after conducting the post-mortem of the dead body. The sealed bundle and the envelop etc were deposited at P.S.-Sindhauri.

17. The prosecution has also produced and examined, Dinesh Singh, S.I, Reader of Addl. S.P. Office, Shahjahanpur P.W.5 This P.W. has stated, on oath that he was posted at Sindhauri in the capacity of Sub Inspector on 26.9.84.

18. This case was registered in his presence at P.S. Sindhauri and the investigation of the case was entrusted to him. This P.W. has stated that the inquest report and connected papers were prepared by him. This P.W. has proved inquest report marked as Ext.Ka-3., photo of the dead body Ext.Ka-4, police form no. 13 Ext. Ka-5, police form no. 33 Ext.Ka-6, sample of seal Ext.Ka-7, site plan Ext.Ka-B; memo of luntern Ext. Ka-9, memo of torch Ext.Ka-10 memo of tikli Ext.Ka-11,. This P.W. has also proved blood stained Takia (pillow) and blood stained Kathri Ext.6 & Ext.7 respectively., copy of H.O.R. Ext.Ka-13, charge sheet Ext.Ka-14, chick FIR Ext.KO-15 and Copy of G.D. Ext.Ka-16.

19. The prosecution has also filed extract of *khatauni* and extract of *khasra* dated 22.6.64; sale deed dated 9.2.84 in question. The judicial notice of these documents has were taken by the act and these papers were duly exhibited.

20. The accused persons were examined under section 313 Cr.P.C. All the accused persons denied their participation in the present occurrence and they have stated that they have been falsely implicated in this case due to enmity. They have specifically stated that they have been falsely implicated due to Pt. Ramadhin Misra, of the said village. The accused persons were given opportunity to adduce oral and documentary evidence in their defence but no oral or documentary evidence whatsoever has been adduced by the accused persons in their defence.

21. After hearing the rival submissions, perusal of the material on record and the judgment and order passed by the trial court, we find that the occurrence took place at about 11:00 p.m., in the night and F.I.R. was lodged on the next day (26.09.1984) at 2:30 a.m. P.W-1, Ram Chandra, has proved the motive of the crime stating that his father, Thakuri, purchased an agricultural land in the name of his mother, Smt Brajrani, prior to the incident which was

being ploughed by accused, Puttan Khan, as share cropper (*bataidar*). He has further stated that there is vacant land adjacent to the *chaupal*. Accused, Ram Lal, wanted to grab it. Implication of the appellant, Krishna Kumar, was justified on the ground that he was friend of co-accused, Ram Lal and Puttan Khan. The execution of sale-deed prior to the incident was proved before the trial court.

22. There was a case crime no. 136-A/1984 registered against P.W.-1, Lalla Singh, Puttan Khan and Krishna Kumar (appellant), but P.W.-1, Ram Chandra, P.W.-2, Ram Ratan and deceased, Thakuri, had never been witness in this case registered by Pandit Ramdheen Mishra. Therefore, no motive could be assigned to the appellant for committing the murder of Thakuri because of his implication in this case.

23. The motive of the crime has been clearly assigned to other co-accused, but the appellant has been implicated in this case under section 302 read with section 34 IPC. In the F.I.R. main role has been assigned to Puttan Khan and Ram Lal. If common intention is proved but no overt act is attributed to the individual accused Section 34 IPC will be attracted as it involves vicarious liability, but when participation of accused in the crime is proved and common intention is absent section 34 IPC cannot be invoked. There is requirement of proving of pre-arranged plan and it pre-supposes prior concert i.e., prior meeting of minds. Common intention means pre-oriented plan and acting in pursuance of the same. It must exist prior to commission of act in a point of time. The burden of proving the commission of offence by more than two accused due to common intention is always on the prosecution. In this case the aforesaid burden was not discharged by the prosecution.

24. In the case of **Mahboob Shah V. Emperor (1945)** the Privy Council laid down the following principles relating to the application of Section 34 I.P.C. :-

"(i) The essence of liability under Section 34 is to be found in the existence of a common intention leading the accused to commit an offence in furtherance of such intention.

(ii) To connect several accused together under Section 34, it must be shown that one of the accused committed an offence in furtherance of the common intention and only then liability for the crime may be imposed on any one of the persons in the same

manner as if the acts were done by him alone.

(iii) Common intention pre-arranged plan and to convict the accused of an offense applying the section it should be proved that criminal act was done in concert according to the pre-arranged plan.

(iv) In most cases it is very difficult, if not impossible, to procure direct evidence to prove the intention of the person and it has to infer from the conduct of the person and other relevant circumstances of the case.

(v) The inference of a common intention as provided under Section 34 of the Indian Penal Code should never be reached unless there exist such compelling circumstances and such common intention is a necessary inference deductible from the circumstances of the case.

(vi) Care must be taken not to confuse same intention with common intention, even though the line separating the two is very thin, but yet they are two different concepts and for attaching liability under Section 34 of the Indian Penal Code, the common intention is a necessary pre-requisite along with committing an offense in furtherance of such common intention."

25. In the case of **Jai Bhagwan V/S State of Haryana 1999 AIR(SC) 1083**, the Apex Court held in Para 11:-

"11. To apply Section 34, IPC apart from the fact that there should be two or more accused, two factors must be established : (i) common intention and (ii) participation of the accused in the commission of an offence. If common intention is proved but no overt act is attributed to the individual accused, Section 34 will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent, Section 34 cannot be invoked. In every case it is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case."

26. In the case of **Krishnamurthy @ Gunodu and Others Vs. State of Karnataka 2022 0 Supreme(SC) 268** it was observed by the Apex Court in Para Nos. 18 and 19:-

"18. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed.

Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co- participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants. Further, the expression/term "criminal act" in Section 34 IPC refers to the physical act, which has been done by the co-perpetrators/participants as distinct from the effect, result or consequence. In other words, expression "criminal act" referred to in Section 34 IPC is different from "offence". For example, if A and B strike Lathi at X, the criminal act is of striking lathis, whereas the offence committed may be of murder, culpable homicide or simple or grievous injuries. The expression "common intention" should also not be confused with "intention" or "mens rea" as an essential ingredient of several offences under the IPC. Intention may be an ingredient of an offence and this is a personal matter. For some offences, mental intention is not a requirement but knowledge is sufficient and constitutes necessary mens rea. Section 34 IPC can be invoked for the said offence also [refer Afrahim Sheikh and Ors. (supra)]. Common intention is common design or common intent, which is akin to motive or object. It is the reason or purpose behind doing of all acts by the individual participant forming the criminal act. In some cases, intention, which is ingredient of the offence, may be identical with the common intention of the co-perpetrators, but this is not mandatory.

19. Section 34 IPC also uses the expression "act in furtherance of common intention". Therefore, in each case when Section 34 is invoked, it is necessary to examine whether the criminal offence charged was done in furtherance of the common intention of the participator. If the criminal offence is distinctly remote and unconnected with the common intention, Section 34 would not be applicable. However, if the criminal offence done or performed was attributable or was primarily connected or was a known or reasonably possible outcome of the preconcert/contemporaneous engagement or a manifestation of the mutual consent for carrying out common purpose, it will fall within the scope and ambit of the act done in furtherance of

common intention. Thus, the word "furtherance" propounds a wide scope but should not be expanded beyond the intent and purpose of the statute. Russell on Crime, (10th edition page 557), while examining the word "furtherance" had stated that it refers to "the action of helping forward" and "it indicates some kind of aid or assistance producing an effect in the future" and 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." An act which is extraneous to the common intention or is done in opposition to it and is not required to be done at all for carrying out the common intention, cannot be said to be in furtherance of common intention."

27. In view of the above consideration, we are of the view that the witnesses for prosecution only proved the motive for commission of the crime against the co-accused, Puttan Khan and Ram Lal. They also assigned overt role to the aforesaid co-accused. The role of only extending threat by pointing out country made pistol against the informant and his other companions was assigned to the appellant, which too was not proved before the trial court by leading any credible evidence. Therefore, we are of the view that appellant, Krishna Kumar, deserves to be extended benefit of doubt since the prosecution has not proved the common intention of the appellant in causing the offences in dispute in furtherance of common intention of all the accused.

28. Accordingly, the conviction of the appellant awarded by the trial court is hereby set aside.

29. The appellant is on bail. His bail bond is cancelled and sureties are discharged.

30. The criminal appeal is **allowed**.

31. Let the trial court record along with copy of this judgment be sent to the trial court.

February 4, 2026
Abhishek

(Jai Krishna Upadhyay,J.) (Siddharth,J.)