



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 1330 of 1989

Kishan Lal and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: Raghuvansh Misra, Rahul Misra
Counsel for Respondent(s)	: D.G.A.

Court No. - 43

HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Vinai Kumar Dwivedi, J.)

1. The present criminal appeal has been filed by the accused-appellants, namely, Kishan Lal S/o Bhola Nath, Bhola Nath S/o Sewa Ram and Veerpal S/o Rameshwar against the judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Vth Additional District and Sessions Judge, Pilibhit in Sessions Trial No. 33 of 1988 (Kishan Lal and Others v. State of U.P.) arising out of Case Crime No. 338 of 1987, under Section 302 read with Section 34 I.P.C., Police Station- Bisalpur, District- Pilibhit.

2. By the impugned judgment and order of conviction and sentence dated 16.05.1989, the learned Vth Additional District and Sessions Judge, Pilibhit held the accused-appellants guilty and convicted them under Section 302 read with Section 34 I.P.C., sentencing each of them to undergo imprisonment for life. Aggrieved by the judgment and order dated 16.05.1989, the accused-appellants have preferred the present criminal appeal before this Court.

3. From the written report (Exhibit Ka-1), the prosecution case is that on the date of the incident, i.e. 23.10.1987, in the morning hours, the informant Ram Dayal (PW-5), along with his elder brother, Indal was returning on a bicycle after meeting Mool Chand, the Gram Pradhan of Village Gujranpur, which is situated 1/2 km away in the north direction from the village of informant. Indal was riding the bicycle, while the informant Ram Dayal (PW-5) was seated on the carrier. At about 10:00 a.m., when they reached the sugarcane field of Ramchandra Lal at Kulawa, the accused persons suddenly emerged from the sugarcane field. Accused Kishan Lal S/o Bhola Nath was armed with a sword; Bhola Nath S/o Sewa Ram, was armed with a *kanta*; and Veerpal S/o Rameshwar Dayal, was also carrying a *kanta* in his right hand. The accused Bhola Nath assaulted Indal with the *kanta*, proclaiming that they were taking revenge that day. The informant Ram Dayal (PW-5), after jumping from the bicycle, ran away raising alarm that his brother was being killed. Thereafter, all the three accused persons, acting with common intention and in furtherance of a pre-concerted plan, assaulted Indal with *kanta* and sword with the intention to cause his death. As a result of the said assault, Indal died on the spot and his head was severed from his body. Hearing the cries of the informant, Omkar and Ramlal, residents of the village, rushed to the spot and witnessed the accused persons committing the murder of Indal, brother of the informant. When they raised alarm and challenged the accused persons, they after leaving the dead body at the spot, fled towards the northern direction. It is further stated in the written report that Omkar S/o Bhola Nath was murdered in the year 1981, in which Indal, brother of the informant Ram

Dayal was named as an accused. He faced trial in the said case and was convicted and sentenced to four years' imprisonment. His appeal was pending and he was on bail. On account of the said previous enmity, the accused persons committed the murder of brother of the informant.

4. After lodging of the written report (Exhibit Ka-1), a First Information Report (Exhibit Ka-13) was registered at Police Station Bisalpur against the named accused persons, namely, Kishan Lal S/o Bhola Nath, Bhola Nath S/o Sewa Ram and Veerpal S/o Rameshwar, as Case Crime No. 338 of 1987, under Section 302 IPC, on the date of the incident itself at about 2:00 p.m. After registration of the FIR, the investigation was entrusted to S.I. Tejpal Singh (PW-6), who took up the investigation and proceeded in accordance with law. The Investigating Officer inspected the place of occurrence and prepared the site plan. He recovered blood stained soil as well as simple soil from the place of occurrence, sealed the same, and prepared the recovery memo (Exhibit Ka-2). He also took into custody one bicycle and a pair of slippers lying at the place of occurrence and prepared a recovery memo (Exhibit Ka-3). Further, from the body of deceased, the Investigating Officer recovered a blood- stained trouser and a white *kurta*, which were duly sealed and taken into possession, and the relevant recovery memo was prepared as Exhibit Ka-4. The Investigating Officer also conducted the inquest proceedings (*panchayatnama*) of the dead body of deceased and prepared the inquest report (Exhibit Ka-5). Thereafter, the dead body was sent for post-mortem examination. Subsequently, the Investigating Officer S.I. Tejpal Singh (PW-6) recorded the statements of the informant Ram Dayal (PW-5) and other eyewitnesses of the occurrence under Section 161 Cr.P.C. After completing all the formalities and procedures of investigation, the Investigating Officer S.I. Tejpal Singh (PW-6) submitted the charge-sheet against the accused persons, namely, Kishan Lal, Bhola Nath and Veerpal under Section 302 IPC before the Court of the concerned Magistrate.

5. Since the offence was exclusively triable by the Court of Session, the learned Magistrate committed the case to the Sessions Court for trial.

The learned Trial Court framed charges against the accused-appellants on 24.02.1989 under Section 302 read with Section 34 IPC, to which the accused-appellants pleaded not guilty and claimed trial.

6. In order to prove its case against the accused-appellants, the prosecution examined Ramlal (PW-1), Omkar (PW-2), Salik Ram (PW-3), Mool Chand (PW-4), the informant Ram Dayal (PW-5), the Investigating Officer S.I. Tejpal Singh (PW-6) and Dr. S.K. Agrawal (PW-7).

7. Apart from the oral evidence of the aforesaid witnesses, the prosecution also relied upon the documentary evidence, such as, the written report (Exhibit Ka-1), the recovery memo of blood- stained and plain soil (Exhibit Ka-2), the recovery memo of bicycle, slippers and H.M.T. watch (Exhibit Ka-3), the recovery memo of blood stained clothes of the deceased (Exhibit Ka-4), the inquest report (Exhibit Ka-5), the charge-sheet (Exhibit Ka-12) and the post-mortem report (Exhibit Ka-15).

8. After conclusion of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C., wherein they denied the prosecution case and stated that they had been falsely implicated in the present case on account of previous enmity. It was further stated that the prosecution witnesses had deposed falsely against them due to such enmity. The accused-appellants, however, did not adduce any defence witness in support of their case.

9. After hearing the arguments of both sides and upon appreciation and evaluation of the evidence on record, the learned Trial Court found the accused-appellants, namely, Kishan Lal, Bhola Nath and Veerpal guilty of the offence and convicted them under Section 302 read with Section 34 IPC to undergo imprisonment for life.

10. Vide order dated 15.12.2025 passed by this Court, the appeal in respect of appellant nos. 1 and 2, namely, Kishan Lal and Bhola Nath, stood abated on account of their death. Consequently, the appeal now

survives only on behalf of appellant no.3, Veerpal and is being adjudicated, accordingly.

11. We have heard the arguments advanced by learned counsel for the surviving appellant no.3 and the learned A.G.A. for the State. We have also gone through the entire evidence available on record and have also perused the impugned judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Trial Court.

12. Learned counsel for appellant no. 3- Veerpal, the sole surviving appellant, contended that the so-called eyewitnesses of the occurrence, namely, Ramlal (PW-1) and Omkar (PW-2) have turned hostile and have not supported the prosecution case. It was argued that only the informant Ram Dayal (PW-5), who is the brother of the deceased, has supported the prosecution version. However, his presence at the place of occurrence on 23.10.1987 is highly doubtful and suspicious. It has also been argued by the learned counsel for appellant no. 3 that the prosecution has wholly failed to prove the existence of a pre-plan, premeditation, and joint participation by all the accused-appellants in the commission of the alleged crime, in light of the ingredients of Section 34 IPC. Learned counsel for the appellant no.3 further argued that the named eyewitnesses mentioned in the written report, namely, Ramlal (PW-1) and Omkar (PW-2) have not supported the prosecution case during trial, and therefore the conviction of the accused is based solely on the interested and solitary testimony of the informant Ram Dayal (PW-5), which is unsafe to rely upon in the facts and circumstances of the present case. It was thus submitted that the learned Trial Court has illegally and erroneously convicted the accused-appellants by placing reliance on doubtful and unreliable evidence, ignoring the settled principles governing appreciation of evidence. Consequently, the judgement and order of conviction and sentence dated 16.05.1989 is against the weight of evidence on record and is liable to be set aside and the instant criminal appeal deserves to be allowed.

13. *Per contra*, learned A.G.A. for the State submitted that although the eyewitnesses Ram Lal (PW-1) and Omkar (PW-2) have turned hostile and have not supported the prosecution case, the informant Ram Dayal (PW-5), who is the brother of the deceased, has fully and consistently supported the prosecution version in his testimony. The learned A.G.A. further submitted that it is a settled principle of law that a conviction can safely be based on the testimony of a solitary witness, provided his evidence is found to be credible and trustworthy. Further, the learned Trial Court, in a proper and legal perspective, placed reliance upon the testimony of Ram Dayal (PW-5), who is the solitary eyewitness in the present case, and on the basis of his reliable evidence rightly held the accused-appellant guilty of the offence. It was vehemently argued by learned A.G.A. that the judgment and order of conviction and sentence dated 16.05.1989 passed by the learned Trial Court is fully justified on the basis of the evidence available on record and does not suffer from any misappreciation and mis-evaluation of the prosecution evidence. The Trial Court has, in accordance with law and on proper appreciation of the evidence, rightly convicted the accused-appellant for the commission of the alleged offence. Thus, prosecution has fully proved its case beyond all reasonable doubt. Consequently, it was submitted that the instant criminal appeal filed by the accused-appellant lacks merit, and the same is liable to be dismissed.

14. In view of the arguments advanced by the learned counsel for sole surviving accused-appellant no.3, Veerpal and the counter submissions made by the learned A.G.A. for the State, we have perused the written report (Exhibit Ka-1) and the entire evidence on record. From perusal of the First Information Report, it is apparent that the incident is alleged to have occurred on 23.10.1987 at about 10:00 a.m.

15. From perusal of the post-mortem report (Exhibit Ka-15), and the testimony of Dr. S.K. Agrawal (PW-7), who conducted the post-mortem examination of the deceased Indal, it is revealed that the following injuries were found on the body of deceased:

“1. An incised wound measuring 15 cm × 5 cm, bone deep, situated on the front side of the chest at the root of the neck. The C-7 and C-8 vertebrae were severed at the level of bone, and the chest was found separated from the neck.

2. Two incised wounds, each measuring 4 cm × 1 cm, bone deep.

3. An incised wound measuring 3 cm × 1 cm, bone deep, situated slightly above the left ear.

4. An incised wound measuring 2 cm × ½ cm, bone deep, located on the middle front portion of the head.

5. An incised wound measuring 5 cm × 1 cm, bone deep, extending from the middle of the head towards the left side, involving the left eye and left cheek.

6. Two incised wounds, each measuring 3 cm × 1 cm, bone deep, present on the left wrist, over the upper part of the wrist bone. The wrist bone was found cut.

7. An incised wound measuring 5 cm × ½ cm, bone deep, present on the back of the left palm.

8. Two incised wounds, each measuring 3 cm × 1 cm, bone deep, present on the back of the left forearm, towards the outer side.

9. An incised wound measuring 4 cm × 1 cm, bone deep, present on the left shoulder.

10. An incised wound measuring 3 cm × 1 cm, bone deep, present on the back of the right palm.

11. An incised wound measuring 2 cm × 1 cm, bone deep, present on the front side of the right palm.

12. An incised wound measuring 4 cm × 1 cm, bone deep, present on the back of the right hand and fingers.

13. An incised wound measuring 2 cm × 1 cm, bone deep, present between the toes of the right foot.”

16. From the testimony of Dr. S.K. Agrawal (PW-7) and from the postmortem report (Exhibit Ka-15), it is evident that the cause of death of the deceased was shock and hemorrhage resulting from ante-mortem injuries. The postmortem report clearly establishes that the deceased sustained thirteen injuries on vital parts of the body. Thus, it stands proved that the deceased was brutally murdered.

17. According to the prosecution case as set out in the FIR, the informant Ram Dayal (PW-5) was seated on the carrier of the bicycle, while the deceased was riding the bicycle. When the accused-appellants allegedly assaulted the deceased, the informant is stated to have got down from the bicycle and fled towards the southern direction. It is also mentioned in the FIR that apart from the informant Ram Dayal (PW-5),

Ramlal (PW-1) and Omkar (PW-2) had also witnessed the commission of alleged offence by the accused persons.

18. However, upon appreciation of the evidence of Ramlal (PW-1) and Omkar (PW-2), it is evident that both these prosecution witnesses did not support the prosecution case before the Trial Court and were declared hostile. They also denied the statements allegedly made by them under Section 161 Cr.P.C. before the Investigating Officer.

19. From the testimony of PW-1 and PW-2, the only fact that stands established is that on the date of the incident they had seen the dead body of the deceased lying at the place of occurrence. Both these witnesses categorically stated that they had not seen the actual commission of the offence by any of the accused person.

20. Thus, from the evidence of the aforesaid witnesses, it is proved only to the extent that the deceased was murdered on the said date, time and place and deceased's body with severed head, was found at the place of occurrence.

21. Prosecution witness Salik Ram (PW-3) has categorically testified that after the occurrence of the incident, he scribed the *tehriri* on the dictation of informant Ram Dayal (PW-5). He further deposed that after scribing the said report, he endorsed his own signatures as well as the signatures of Ram Dayal (PW-5) on it. This witness has also stated that he did not go to the police station. From a conjoint reading of the testimony of prosecution witness Salik Ram (PW-3), it is clearly established that Salik Ram (PW-3) is the scribe of the *tehriri*, i.e., the written report marked as 'Exhibit Ka-1'. The said written report (Exhibit Ka-1) was written by Salik Ram (PW-3) as dictated by the informant Ram Dayal (PW-5).

22. Prosecution witness Mool Chand (PW-4) has proved the recovery memo of blood-stained soil, plain soil marked as 'Exhibit Ka-2'. He has further proved the recovery memo of a bicycle, slippers, and an HMT wristwatch recovered from the place of occurrence, marked as 'Exhibit Ka-3'. This witness has also proved the recovery memo of the clothes of

the deceased, marked as 'Exhibit Ka-4'. Apart from the above, prosecution witness Mool Chand (PW-4) has proved the *panchayatnama* of the deceased, marked as 'Exhibit Ka-5'. This witness has stated in his evidence that the deceased Indal Prasad was his relative. From the statement of this witness Mool Chand (PW-4), it is also clear that at about 11:00- 11:30 a.m., he reached at the place of occurrence. At that time, police were preparing recovery memo, Exhibit Ka-2, Exhibit Ka-3, Exhibit Ka-4 and Exhibit Ka-5. At that time, Daroga Ji was also questioning that who had enmity with whom. PW-4 has further deposed that the proceedings of the *Panchayatnama* were conducted in his presence and that the same was prepared before him. The witness has testified the aforesaid facts.

23. It is evident that the prosecution witnesses, namely, Ramlal (PW-1) and Omkar (PW-2), whose names find place in the written report (Exhibit Ka-1) as eye-witnesses of the alleged incident, have turned hostile before the Trial Court and have not supported the prosecution case. Salik Ram (PW-3) is a formal witness who scribed the written report (Exhibit Ka-1) on the dictation of the informant, Ram Dayal (PW-5). Mool Chand (PW-4) is a witness only with regard to the recovery and the preparation of the recovery memo and the *Panchayatnama*, and he has proved Exhibit Ka-2, Exhibit Ka-3, Exhibit Ka-4, and Exhibit Ka-5.

24. Thus, in the present case, the only eye-witness of the alleged incident is the informant, Ram Dayal (PW-5). He is the star witness of the prosecution, who claims to have witnessed the commission of alleged crime by all the accused-appellants with his own eyes on the date of incident, i.e., 23.10.1987. His version is also reflected in the written report (Exhibit Ka-1).

25. From a perusal of examination-in-chief of informant, Ram Dayal (PW-5), it transpires that at the time of alleged incident he was present along with his elder brother, the deceased Indal Prasad. He deposed that he and his brother Indal had gone on a bicycle to meet Mool Chand, the Gram Pradhan of village Gujranpur. While returning from the meeting,

at about 10:00 a.m., when they reached near the Tila situated close to the canal (*nahar*), the accused persons, namely, Veerpal, Kishan Lal and Bhola Nath, suddenly emerged from a sugarcane field. According to him, Veerpal and Bhola Nath were armed with *kanta*, whereas Kishan Lal was armed with a sword. The accused persons, after emerging from the sugarcane field, brutally assaulted the deceased and severed his head from his body. He saw the severed head of his brother and thereafter, the accused fled from the spot. The witness stated that when he raised alarm and ran some distance, Ramlal and Omkar, who were passing near the canal, reached the spot. Ramlal and Omkar attempted to intervene, however, before they could prevent the assault, the accused persons had already severed the head of the deceased and fled. From the evidence of this witness, it is also apparent that the deceased was riding a bicycle before the alleged incident, and his slippers and wristwatch remained lying at the place of occurrence.

26. In his cross-examination, the informant Ram Dayal (PW-5) stated that he along with his brother, Indal Prasad went at around 7:00 a.m. to the house of Mool Chand, the village Pradhan. He said that when the accused came out of the sugarcane field, he got down from his bicycle and ran away shouting, but he could not remember which direction he ran.

27. From the cross-examination of the witness, it has also emerged that there had been enmity between the accused persons and my brother ever since a murder case was lodged against my brother, Indal Prasad. In that earlier case, my brother, Indal, had been convicted and sentenced to four years' imprisonment. At the time of the alleged incident, the appeal against that conviction was pending, and my brother was out on bail.

28. On perusal of the written report (Exhibit Ka-1), it is apparent that in 1981, Omkar S/o Bhola Nath, was murdered, and my brother Indal had been named in that case. He had undergone trial and served part of the sentence. In view of these circumstances, it appears that the murder

of the brother of the informant was committed by the accused persons due to the existing enmity arising from the earlier case.

29. From the perusal of the written report (Exhibit Ka-1), it is evident that there existed a bitter enmity between the deceased, Indal Prasad, and the accused persons. The cause of this enmity was the murder of Omkar S/o Bhola Nath, in which the deceased, Indal Prasad, had been named as an accused. Indal Prasad was tried, convicted, and sentenced to four years' imprisonment. At the time of the alleged incident, he was on bail, and the appeal against his conviction was pending. These circumstances indicate a strong motive on the part of the accused-appellants to commit the murder of Indal Prasad, who was returning home with his brother, the informant Ram Dayal (PW-5), on a bicycle. The existence of this heated and revengeful enmity is further corroborated by the cross-examination of the accused-appellants. Accordingly, the facts of long-standing enmity and revengeful intention of the accused-appellants are clearly established from the evidence of the informant Ram Dayal (PW-5), as deposed in Court.

30. Although the other prosecution witnesses, such as, Ramlal (PW-1) and Omkar (PW-2), have not supported the prosecution story, but when their evidence is considered in the light of the written report (Exhibit Ka-1), the evidence of the prosecution witness Ram Dayal (PW-5) is found to be fully reliable and relevant. We cannot reject the evidence of the informant Ram Dayal (PW-5) only on the ground that the evidence of this sole eyewitness has not been supported by other prosecution witnesses, such as, Ramlal (PW-1) and Omkar (PW-2). The evidence of the informant Ram Dayal (PW-5) is further supported and corroborated by the postmortem report (Exhibit Ka-15) and the evidence of Dr. S.K. Agarwal (PW-7), who conducted the postmortem examination of the deceased, Indal Prasad.

31. From the perusal of the postmortem report (Exhibit Ka-15) prepared by Dr. S.K. Agarwal (PW-7), it is found that thirteen grievous injuries were sustained on the vital parts of the deceased's body.

According to Dr. S.K. Agarwal, all these injuries were caused by a sword, *kanta*, or some other heavy sharp-edged weapon. The informant, Ram Dayal (PW-5), in his written report (Exhibit Ka-1) as well as in his evidence before the Court, stated that the accused-appellant Kishan Lal was armed with a sword, while the accused-appellants Bhola Nath and Veerpal were armed with *kanta*.

32. From a perusal of the number, nature, and location of the injuries, it is evident that all three accused-appellants were present at the place of occurrence and jointly assaulted the deceased, Indal Prasad, with a sword and *kanta*, thereby causing thirteen grievous injuries to the vital parts of his body. The nature and size of the injuries, as well as the weapons used, indicate that the accused-appellants were motivated by revenge, as the deceased, Indal Prasad, had been named and convicted in connection with the murder case of Omkar S/o accused-appellant Bhola Nath. This establishes a strong motive for the accused-appellants to commit the murder of Indal Prasad as an act of revenge for the earlier incident. Accordingly, the fact of motive against the accused-appellants, which prompted them to commit the alleged crime, has been fully established by the prosecution.

33. As far as the testimony of the sole eyewitness, informant Ram Dayal (PW-5), is concerned, upon perusal and analysis of the entire evidence, it is found that there is no material or major contradiction in his testimony that could render his deposition doubtful or suspicious. In other words, the evidence of the sole eyewitness, Ram Dayal (PW-5), is wholly reliable. Further, the evidence of Ram Dayal (PW-5) inspires confidence, as the fact of motive against the accused-appellants for the commission of the alleged crime has been established through his testimony.

34. The presence of the sole eyewitness, informant Ram Dayal (PW-5), is further corroborated by his testimony in Court as well as by the written report (Exhibit Ka-1). It is a natural and human tendency that the family members of a victim would not exonerate the real culprit or

falsely implicate an innocent person in connection with the crime. Family members of the victim are generally inclined to ensure that the actual perpetrator is held accountable for the commission of the crime.

35. From the evidence of the sole eyewitness, informant Ram Dayal (PW-5), and the written report (Exhibit Ka-1), it is evident that all the accused-appellants, with a strong motive, hatched a premeditated plan. They were waiting for a suitable opportunity and when they found Indal Prasad, alone with his brother, the informant Ram Dayal (PW-5), they, in furtherance of their premeditated plan, jointly assaulted Indal Prasad with sword and *kanta*, thereby causing his murder.

36. The number, nature, and location of the injuries, as well as the nature of the weapons used in the commission of the alleged crime, establish that all three accused-appellants equally participated in the offence. Therefore, from the foregoing facts, it is evident that the accused-appellants acted with pre-planning, premeditation, and actively participated in the commission of alleged crime.

37. The Hon'ble Supreme Court in the case of ***Ashok Kumar v. State of Punjab***; AIR 1977 Supreme Court 109 has held on Section 34 IPC that:

"the existence of a common intention amongst the participants in a crime is the essential element for application of this Section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision."

38. In the case of ***Babulal Bhagwan Khandare v. State of Maharashtra***; AIR 2005 Supreme Court 1460, the Hon'ble Supreme Court in paragraph nos. 20 & 23 has held that:

"20. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the Section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such

intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of mind of all the accused persons to commit the offence for which they are charged with the aid of Section 34 be it pre-arranged or on the spur of moment; but it must necessarily be before the commission of the crime. The true contents of the Section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself.

23. The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them."

39. In the case of ***Virendra Singh v. State of M.P.***; (2010) 8 SCC 407, the Hon'ble Supreme Court in paragraph nos. 15, 16 and 17 has held that:

"15. Ordinarily, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had the common intention to commit the offence. The words "common intention" implies a pre-arranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the pre-arranged plan. Common intention comes into force prior to the commission of the act in point of time, which need not be a long gap. 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 the crime showing a pre- arranged plan and prior concert. The common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.

16. The essence of the liability is to be found in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. Undoubtedly, it is difficult 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. Therefore, in order to find whether a person is guilty of common intention, it is absolutely necessary to carefully and critically examine the entire evidence on record. The

common intention can be spelt out only from the evidence on record.

17. Section 34 is not a substantive offence. It is imperative that before a man can be held liable for acts done by another, under the provisions of this section, it must be established that there was common intention in the sense of a pre-arranged plan between the two and the person sought to be so held liable had participated in some manner in the act constituting the offence. Unless common intention and participation are both present, this section cannot apply."

40. Upon re-examination of the evidence in light of the Hon'ble Supreme Court's case laws as referred above, it is evident from the prosecution evidence that all the accused-appellants were motivated by a strong desire to avenge the murder of Omkar, son of accused-appellant Bhola Nath, acted pursuant to a pre-planned and pre-meditated design. They were concealing themselves in a sugarcane field adjoining a canal in wait for the deceased, Indal Prasad. When the deceased passed through the place of occurrence, all the accused-appellants, acting in furtherance of the common intention, attacked him with swords and *kanta*, inflicting grievous injuries on vital parts of his body and ultimately severing his head from his body. Thus, the prosecution evidence clearly establishes that the surviving appellant, Veerpal, along with the other appellants (now deceased), acted pursuant to a pre-planned and premeditated design, and that each of them actively participated in the commission of the alleged crime. The ingredients of Section 34 of Indian Penal Code are fully established, making all accused liable for the commission of alleged crime. The defence arguments lack merit in light of the evidence and also in light of the aforesaid decisions of Hon'ble Supreme Court.

41. From a perusal of the findings and reasoning given by the learned Trial Court in the judgment and order of conviction and sentence dated 16.05.1989, it is apparent that the learned Trial Court duly considered the question of motive and, after appreciating the evidence, found a strong motive against all the accused-appellants for the commission of alleged crime. The learned Trial Court recorded its findings based on the

prosecution evidence, which, upon examination, are wholly in accordance with the evidence and the law.

42. The learned Trial Court placed full reliance on the evidence of informant, Ram Dayal (PW-5), and on the basis of his testimony and the motive as stated in the written report (Exhibit Ka-1), concluded that all the accused-appellants had a strong motive to commit the alleged crime. From the perusal of the Trial Court's reasoning, it is evident that the prosecution witnesses were discussed in a proper and legally sound manner, in accordance with settled principles of law. Accordingly, the findings and reasoning given by the learned Trial Court are found to be affirmable by this Court.

43. Thus, from the above discussions, we find no force or merit in the arguments advanced by the learned counsel for the surviving appellant, Veerpal. We further hold that the learned Trial Court has rightly appreciated the evidence adduced by the prosecution and correctly found the surviving appellant, Veerpal, along with the other appellants (now deceased), guilty under Section 302 read with Section 34 IPC. We do not find any illegality or infirmity in the Trial Court's appreciation of evidence.

44. The impugned judgment of conviction and sentence dated 16.05.1989, passed by the learned Trial Court under Sections 302 read with Section 34 IPC, is fully supported by the evidence available on record. The evidence conclusively establishes the participation of the surviving appellant, Veerpal, in the alleged crime with premeditation and prior planning, along with the other appellants (now deceased).

45. Thus, from the above discussions, it is evident that the essential ingredients of Section 34 of the IPC, namely, pre-planning, premeditation and participation, stand fully established and proved against the surviving accused-appellant, Veerpal. Since the prosecution evidence has conclusively proved the existence of pre-plan, premeditation and active participation on the part of the accused-

appellant, Veerpal, he is consequently liable to be convicted for the offence and charge levelled against him by the prosecution.

46. Accordingly, the present criminal appeal lacks merit and is hereby *rejected*.

47. The accused-appellant, Veerpal, is presently on bail. His personal bond stands cancelled, and his sureties are discharged from their liabilities. He is directed to surrender before the Chief Judicial Magistrate, Pilibhit, within one month from today, to undergo the remaining sentence awarded by the Trial Court vide order dated 16.05.1989.

48. In the event the accused-appellant, Veerpal, fails to surrender before the Chief Judicial Magistrate, Pilibhit, within the stipulated period of one month, the Chief Judicial Magistrate, shall issue a non-bailable warrant to secure his arrest. Upon arrest, he shall be sent to jail to serve the remaining sentence in accordance with the Trial Court's order dated 16.05.1989.

49. The Chief Judicial Magistrate, Pilibhit, is directed to intimate this Court regarding compliance of this order.

50. Let a copy of this judgment be sent to the learned Trial Court along with the Trial Court record forthwith.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

February 26, 2026
Aditya