



2026:AHC:44104-DB

AFR

Reserved on 12.02.2026
Delivered on 26.02.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 2525 of 1984

Ram Hirday and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	: D.S.Tewari, S.P. Shukla, Shashwat Shukla
Counsel for Respondent(s)	: Government Advocate

Court No. - 48

HON'BLE CHANDRA DHARI SINGH, J.
HON'BLE DEVENDRA SINGH-I, J.

Per: Hon'ble Chandra Dhari Singh, J.

1. The matter pertains to district Sultanpur, which comes under the jurisdiction of Lucknow Bench of this Court.
2. Vide order of Hon'ble the Chief Justice dated 16.09.1983 the matter had been transferred to Allahabad High Court for disposal.

3. Pursuant to the order of this Court dated 02.05.2018, appeal on behalf of appellant Nos. 1 and 3 namely Ram Hirday and Shiva Ram have been abated.

4. Now this Court is only concerned with the appellant Gur Prasad.

5. This criminal appeal has been filed against a judgement and order dated 18.03.1981 passed by the Additional Sessions Judge, Sultanpur in ST No. 78 of 1979 whereby the learned Judge convicted and sentenced the appellants Ram Hirdey, Sheo Ram and Gur Prasad to life imprisonment under Section 302/34 IPC.

Facts of the case

6. Brief facts giving rise to the present criminal appeal in short compass are that a written report was filed by the first informant Bhawani Sevak at the police station Musafir Khana, district Sultanpur that the first informant had five bothers and they live separately. One Ram Hirday Upadhyay is his *Pattidar (co-sharer)*. Yesterday, he assaulted his brother Mahesh Narain, report whereof was got lodged. Due to that enmity, Ram Hirday has announced in the village that he will kill everyone. Today, at about 01:00 PM, when he was sitting along with his brothers Raj Narain and Bhawani Prasad were standing at their door, Ram Hirday armed with gun, Gur Prasad and Shiva Ram carrying lathi surrounded his brother and Ram Hirday fired at his brother Tribhuwan Dutt, due to which he got injured and fell down. On hearing the sound of fire, when the first informant, his brothers Raj Narain and

Bhawani Prasad as well as several persons of the village rushed to the spot, the accused persons fled away. His brother has received injuries of gun.

7. On the basis of the aforesaid report, a case was registered against the accused Ram Hirday, Gur Prasad and Shiva Ram under Section 307 IPC, Ext. Ka-3.

8. Injured Tribhuwan Dutt was sent for medical examination and his injuries were examined by PW-3, Dr. Mohd Taufiq, who found the following injuries.

“1. Lacerated wound 17 cm x 5 cm x muscle deep oval shape wound over right axilla extending from front to chest about 8 cm below right shoulder joint to posterior border of axilla, depth more marked in lower side, margin inverted, clotted blood present at margin with multiple lacerated wound skin deep about 4 to 5 in number over upper margin of wound, no tattooing or blackening seen, probing not done, pellets not palpable into upper root of wound, there are small multiple punctured wound, movement at shoulder joint retracted, diffused swelling present. Adv. X-ray. No wound of exit seen.

2. Multiple abrasion 8 cm x 4 cm over inner aspect of right arm just below injury No. 1, and in close contact with lower border of injury No. 1, clot present at base margin at some places, grey in colour, no tattooing or blackening at other places seen.

9. Injury No. 1 was kept under observation. Injury No. 2 simple in nature. Adv. X-ray of right shoulder. All the injuries caused by firearm. Duration of the injuries are about 1/4th day old. The medical examination was done on 14.03.1978 at 03:30 PM. The doctor has proved the injury report as Ext. Ka-4.

10. Thereafter, the injured was taken to Sadar Hospital, where he was under treatment. As the injured was retired military personnel, he was thereafter shifted to Military Hospital Lucknow on 20.03.1978 and was admitted there at 11.35 PM, where he was examined by PW-10, Dr. Major S.K. Jai Puriya. He found the condition of injured very serious and sent information to the civil police vide memo Ext. Ka-09. During the treatment, injured Tribhuvan Dutt died in the Military Hospital on the same night.

11. On the information received by the Military Hospital, SI R.P. Dohrey rushed to Command Hospital, Lucknow on 21.03.1975 at 10-11 AM and prepared inquest report Ext. Ka-8. The body was sealed and sent for postmortem examination. After the death of the deceased, the case was converted to one under Section 302 IPC.

12. PW-7, Dr. Virendra Bahadur conducted autopsy on the cadaver of the deceased, who found the age of the deceased to be about 35 years. Rigormortis passed off all over the body. Post mortem staining present on the back. Both the eyes and mouth were closed. The yellowish fluid coming from both nostrils. The doctor found the following ante-mortem injuries:

“Septic wound 4 cm x 5.5 cm x bone deep on the right axilla extending from posterior axillary line towards front of right side of chest, 9.5 cm above the nipple. Its edges and sloughed wrinkled and dirty yellowish in lower 2/3rd rim of the wound, while the upper 1/3rd rim of the edges are black in colour. The wound is full of pus tht ha gravitated down around the mid axilla. Line towards lower most part of chest. A piece of while most cloth rubbed against the black edge, but no carbon particles could be collected on the cloth.

13. Doctor further noted that no pellets or wads were obtained from the wound mentioned above.

14. In the opinion of the doctor, the death was caused due to septicaemia and toxaemia due to septic wound. The doctor has proved the post-mortem report as Ext. Ka-16.

15. After the registration of the case, the investigation of the case was handed over to PW-11, Radhey Shyam Tiwari. He reached the place of occurrence on 14.03.1978 and collected bloodstained and plain earth and sealed them in two boxes, memo whereof was prepared as Ext. Ka-5. He also prepared site plan Ext. Ka-20. Thereafter, the investigation was transferred. Thereafter the investigation was completed by SI Jagan Nath Prasad Pandey, who submitted the charge sheet Ext. Ka-21.

16. As the case was exclusively triable by the Court of Sessions, learned Magistrate committed the case to the Court of Sessions where case was registered as ST No. 78 of 1979. Learned Additional Sessions Judge-II, Sultanpur vide order dated 06.08.1979 framed the charges against the appellants under Section 302/34 IPC. The charges were read over and explained to the accused in Hindi, who pleaded not guilty and claimed to be tried.

17. To bring home guilt of the appellant beyond the hilt, the prosecution has examined as many as 11 witnesses, out of whom PW-1, Bhawani Sevak, PW-4, Jag Ram and PW-5 Ram Murat are eyewitnesses of the case whereas remaining witnesses are formal one.

18. PW-1, Bhawani Sevak is the first informant. In his examination-in-chief, he deposed that accused Ram Hirday is his Pattidar, accused Shiva Ram is the ploughman of Ram Hirday and accused Gur Prasad is the companion of Ram Hirday. He further deposed that he is five brothers and all of them are residing separately in different houses and had separate cultivation. This witness in his deposition has told about the location of the houses of the accused and the deceased. He deposed that Ram Acchaiber, brother of Ram Hirday, was having a single barrel licensed gun at the time of occurrence. Mahesh Narain is his (Bhawani Sevak) elder brother. In 1977 his brother Mahesh Narain had filed a complaint against 23 persons including the present accused persons, namely Ram Hirday, Shiva Ram and Gur Prasad, which ended in acquittal on 20.06.1977. Accused

persons harbour enmity on account of that criminal litigation. He further deposed that on 13.03.1978, his brother Mahesh Narain was assaulted by Ram Hirday and a report to this effect was lodged by Mahesh Narain at the police station. He further deposed that on 14.03.1978, in the morning Mahesh Narain had gone to Sultanpur to get an x-ray done of the injuries received by him. Since Mahesh Narain was living all alone at this house, he had asked Tribhuwan Dutt (deceased) to look after his cattle. He further deposed that on 14.03.1978 at about 1:00 PM, he was sitting at his door and his brother Tribhuwan Dutt (deceased) had gone to the house of Mahesh Narain at about 12:30 noon to look after the cattle. He heard the abuses coming from the house of Mahesh Narain. He along with Raj Narain and Bhawani Prasad proceeded towards the house of Mahesh Narain and on reaching in front of the house of Jagjiwan, he saw that accused Ram Hirday was armed with a gun and Shiva Ram and Gur Prasad were carrying lathis. Hot talks were going on between Ram Hirday and Tribhuwan Dutt (deceased). There was distance of about 16-17 paces between Ram Hirday and deceased-Tribhuwan Dutt. After exchange of words, Ram Hirday came near the deceased and opened fire causing injury over the right axilla as a result thereof Tribhuwan Dutt fell down. Jagram and Ram Murat reached there and scolded the accused persons. Report of the incident was lodged by PW-1, Bhawani Sevak at police station, Musafirkhana Ext. Ka-1. Thereafter, he took his brother to the hospital at Musafirkhana. This witness further deposed that

thereafter, his brother was sent to Sadar Hospital, Sultanpur for treatment and thereafter shifted to Military Command Hospital, Lucknow where he succumbed to the injuries on 21.03.1978.

19. PW-2, ASI Kandhya Singh in his examination-in-chief deposed that on 14.03.1978, he was posted at police station Musafirkhana as Head Muharrir. On that date, he prepared a Chik Report Ext. Ka-1 at 03:05 PM, on the basis of which a case was registered.

20. PW-3, Dr. Mohd Taufiq had examined the injuries of the injured, the details of which have already been given above.

21. PW-4, Jag Ram, who claims himself to be the eyewitness of the occurrence, in his examination-in-chief deposed that on the date of occurrence at about 12:00 in the noon, he was present at his door which is towards the south of the house of Tribhuwan (deceased). He saw Tribhuwan (deceased) going through the public way to the house of Mahesh Narain. After sometime accused Ram Hirday armed with gun and accused Shiva Ram and Gur Prasad armed with lathis reached near the wall of the house of Mahesh Narain which is on the public way. He further deposed that Ram Hirday started abusing Tribhuwan Dutt. Bhawani Sewak and others also reached there. Tribhuwan Dutt (deceased) also came on the public way. On the exhortation of Ram Hirday to kill Tribhuwan Dutt, Shiva Ram and Gur Prasad proceeded further. At the same time Ram Hirday fired at the deceased, due to

which he fell down. Blood had also oozed at the spot. The bloodstained and plain earth was taken into possession by the Sub-Inspector in his presence, memo whereof was prepared Ext Ka-5 on which he put his thumb impression.

22. PW-5, Ram Murat, another eyewitness of the occurrence deposed that about two years ago at about 01:00 PM, he was taking bath at the well situated at the door of Mahesh Narain. Tribhuwan Dutt (deceased) also reached there and started feeding the cattle. However, he denied to have seen anyone or abusing anyone. He also deposed that he had not seen anyone firing at Tribhuwan Dutt.

23. On this statement, PW-5, Ram Murat has been declared hostile and prosecution was permitted to cross-examine him.

24. PW-6, Mahesh Narain, is not an eyewitness of the occurrence. He deposed about his enmity with Ram Hirday and others. He further deposed that he filed a complaint against Ram Hirday and others which ended in acquittal on 20.06.1977. He also stated that he was again beaten by Ram Hirday by lathi and he had lodged a report, the copy whereof is Ext. Ka-6. He is living all alone in his house because his wife had died and his son was living with his family at Patiala. On 14.03.1978, he went to Sultanpur to get the x-ray done of his injuries and asked Tribhuwan Dutt to look after his cattle in his absence. He came back in the evening and came to know about the occurrence.

25. PW-7, Dr. Virendra Bahadur had conducted autopsy on the cadaver and his deposition has already been discussed above.

26. PW-8, Bodh Ram in his examination-in-chief deposed that on 21.3.1978, he was posted at police station Cantt, Lucknow. Inquest Ext. Ka-8 was prepared in his presence by SI R.P. Dohray. He had also taken the dead body along with relevant documents for post mortem examination.

27. PW-9, Ram Lal, an employee of Military Hospital, Lucknow, is also a witness of the inquest, which was prepared by the police personnel.

28. PW-10, Major S.K. Jai Puriya, was posted at Command Hospital Lucknow on 20.03.1978 for Special Surgical Training. He deposed about the steps taken by him during the admission of the deceased.

29. PW-11, SI Radhey Shyam Tewari was the first investigating officer of the case, whose evidence has already been discussed above.

30. After the closure of the prosecution evidence, the statements of the accused-appellants were recorded under Section 313 Cr.P.C., who denied the charges levelled against them and stated that they have been dragged in the present case on account of previous enmity and claimed to be tried.

31. Learned Additional Sessions Judge, Sultanpur after hearing the learned counsel for the parties and assessing, evaluating and scrutinizing the evidence on record,

convicted and sentenced the accused-appellant as indicated herein above.

32. Hence, this appeal.

Submissions on behalf of the appellant

33. Shri Shashwat Shukla, learned counsel for the appellant-Gur Prasad submits that only surviving appellant Gur Prasad has been convicted with the aid of Section 34 IPC and no overt act has been assigned to him. He was shown to have armed with lathi, but neither any witness has stated that Gur Prasad assaulted the deceased with lathi nor PW-3, Dr. Mohammad Taufiq, who has examined the injured at Musafirkhana nor PW-7 Virendra Bahadur, who conducted pos-mortem examination on the body of the deceased found any injury caused by lathi. It is pointed out that Section 34 IPC requires that all accused persons share a common intention and participate in the criminal act.

34. Shri Shashwat Shukla further pointed out that for conviction under Section 34 IPC, the prosecution must prove a pre-arranged plan or a meeting of minds, which is missing in this case. He submits that merely being present at the scene of occurrence does not prove common intention to commit the murder. In support of his case, learned counsel for the appellant has placed reliance upon the judgement of Hon'ble Supreme Court in Constable **Surendra Singh and another Vs. State of Uttarakhand** (2025 INSC 114).

Submissions on behalf of State

35. On the other hand, Shri S.K. Ojha, learned Additional Government Advocate-1st representing the State submits that the appellant Gur Prasad was present at the place of occurrence armed with lathi and, therefore, he is liable for his conviction under section 302/34 IPC.

Analysis and conclusion

36. Heard learned counsel for the appellant and learned Additional Government Advocate representing the State and perused the record of the case.

37. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that:- (i) there was common intention on the part of several persons to commit a particular crime and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan. Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention.

38. The earliest judgement on the point is **Mahbub Shah Vs. Emperor**, AIR 1945 PC 118, wherein it was held as under:-

“Section 34 IPC lays down a principle of joint liability in the doing of a criminal act. The section does not say “the common intentions of all” nor does it say “an intention common to all”. Under the section, the essence of that 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. To invoke the aid of Section 34 IPC successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to

prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.”

39. In **Gadhdhar Chandra Vs State of West Bengal**, (2022) 6 SCC 576, Hon’ble Supreme Court while upsetting the judgement of the High Court and the trial Court convicting the appellant with the aid of Section 34 IPC, held as under:

“As consistently held by this Court, common intention contemplated by Section 34 of IPC presupposes prior concert. It requires meeting of minds. It requires a pre-arranged plan before a man can be vicariously convicted for the criminal act of another. The criminal act must have been done in furtherance of the common intention of all the accused. In a given case, the plan can be formed suddenly. In the present case the non-examination of two crucial eyewitnesses makes the prosecution case about the existence of a prior concert and pre-arranged plan extremely doubtful.”

40.. **Constable 907 Suendra Singh and another Vs. State of Uttarakhand, (2025)5 SCC 433**, was a case in which on the basis of secret information about smuggling of liquor in a Maruti Car, Head Constable along with appellants three Constables set out in their Indica Car to intercept the Maruti Car. In order to stop the Maruti Car, the Head Constable fired a single shot from his revolver,

which hit the wife of the driver of the Maruti Car, who was seated in the front seat in her temporal region, resulting in her death. The Trial Court convicted and sentenced the Head Constable who fired from his revolver under Section 302 IPC and 27(1) of the Arms Act, but all the three Constables acquitted by the trial Court. In appeal, acquittal of all the three constables were set aside by the High Court by applying Section 34 IPC against them. Hon'ble Supreme Court while upsetting the judgement of the High Court held as under"

"27. Upon consideration of these factors, the learned trial Judge came to a conclusion that even if it was assumed that the remaining three accused had accompanied accused-Jagdish Singh, there was no evidence to come to a conclusion that accused No. 2, 3 and 4 (appellants herein), who were in car with accused-Jagdish Singh had shared a common intention with him to fire upon or to kill the deceased.

28. The learned trial Judge, therefore, found that the prosecution had failed to prove the mental involvement of accused No. 2, 3 and 4 (the appellants herein) who were in car with accused-Jagdish Singh beyond the shadow of reasonable doubt.

29. However, this well-reasoned finding of the learned trial court has been upset by the High Court on the ground that the remaining three

accused were sitting in the same vehicle along with accused-Jagdish Kumar was sufficient to convict them with the aid of Section 34 IPC.

30. By now it is settled principle of law that for convicting the accused with the aid of Section 34 IPC, the prosecution must establish prior meeting of minds. It must be established that all the accused had pre-planned and shared a common intention to commit the crime with the accused who has actually committed the crime. It must be established that criminal act has been done in furtherance of the common intention of all the accused."

41. In view of the aforesaid legal position enunciated by Hon'ble Supreme Court, this Court will now consider whether In the facts and circumstances of the case, the learned Trial Court was right in reaching the conclusion that the appellants acted in furtherance of common intention in committing murder of Tribhuwan Dutt and in attributing constructive liability to the appellants while convicting them under Section 302 read with Section 34 IPC.

42. The first information report was lodged by PW-1, Bhawani Sevak, who is the brother of the deceased with the allegations inter alia that on the date of occurrence when he was sitting along with his brother Raj Narain and Bhawani Prasad was standing at their door, Ram Hirday armed with gun, Gur Prasad and Shiva Ram carrying lathi surrounded his brother and Ram Hirday fired at his

brother Tribhuwan Dutt, due to which he got injured and fell down. The first informant in his deposition has also stated that Ram Hirday was armed with gun, whereas Gur Prasad and Shiva Ram were carrying lathis. Ram Hirday fired at his brother Tribhuwan Dutt.

43. PW-4, Jag Ram, who also claimed himself to be the eyewitness of the case, in his deposition has stated that when he reached at the place of occurrence accused Ram Hirday exhorted that Tribhuwan Dutt be killed. Shiva Ram and Gur Prasad proceeded towards Tribhuwan Dutt with lathis in their hands. At the same time, Ram Hirday fired at Tribhuwan.

44. PW-5, Ram Murat, who was the witness of the case, did not support the prosecution case and turned hostile.

45. Both the eyewitnesses namely PW-1, Bhawani Sevak and PW-4, Jag Ram in their deposition has only stated that present appellant Gur Prasad and Shiva Ram (now dead) were only standing at the place of occurrence having lathi. There is no whisper in the evidence of any of the prosecution witnesses assigning any role to the present appellant Gur Prasad. Moreover, role of exhortation and firing both have been assigned to Ram Hirday, (whose appeal has been disposed of as abated) by the prosecution witnesses and no role has been assigned to the present appellant Gur Prasad, except of standing at the place of occurrence with lathi.

46. In view of the above, we are of the view that the prosecution has failed to establish the guilt of the appellant-Gur Prasad with the aid of Section 34 IPC.

47. Accordingly, the appeal is allowed. The order dated 18.03.1981 passed by the Additional Sessions Judge, Sultanpur in ST No. 78 of 1979 convicting and sentencing the appellant Gur Prasad to life imprisonment under Section 302/34 IPC is set aside.

48. The appellant-Gur Prasad is on bail. His bail bond is cancelled and sureties are discharged.

49. Office is directed to send a copy of this order to the court concerned for compliance and compliance report be submitted to this Court within two months.

(Devendra Singh-I,J.) (Chandra Dhari Singh,J.)

Dated: February 26, 2026

Ishrat