HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

DIVISION BENCH:

BEFORE: G.S. AHLUWALIA

&

RAJEEV KUMAR SHRIVASTAVA, JJ.

CRIMINAL APPEAL NO. 862/2011

Ramswaroop & Others

Vs.

The State of Madhya Pradesh

Shri Ashok Kumar Jain, learned counsel for the appellants.
Shri C.P. Singh, learned counsel for the respondent/State.

Reserved on	:	28th April, 2022.
Whether approved for reporting	:	Yes/_____

J U D G M E N T

(Passed on 09/05/2022)

***Per* Rajeev Kumar Shrivastava, J.:**

The present Criminal Appeal u/S 374 of CrPC has been preferred by appellants Ramswaroop, Ramesh and Hemant, assailing the impugned judgment of conviction and order of sentence dated 28-09-2011 passed by Additional Sessions Judge, Chachoda, Distt.Guna (MP) in Sessions Trial No.256/2008 whereby the appellants have been convicted u/S 302/34 of IPC (two counts) and sentenced to undergo Life Imprisonment with fine of Rs.1,000/- for commission of murder of Kallu and Shivlal

and u/S 323/34 of IPC (four counts) and sentenced to undergo six months RI with default stipulations for causing injuries to four injured persons. Both the sentenced were directed to be run concurrently.

(2) In a nutshell, the case of prosecution is that around 4– 6 months ago from the date of incident 10.06.2008, the Dynamo of appellant No.1 Ramswaroop was stolen and on 10.06.2008, the accused persons were arguing with Kallu (since deceased) and others suspecting them for theft of Dynamo and for resolving the dispute, Nathu Patel and Dheeraj Meena were called by accused persons. During the incident, at around 12.00 noon, when Kallu and Dheeraj were leaving the place then, all of a sudden, the appellants, who were filling their trolley of manure, asked for dynamo or Rs.40,000/- from the complainant party and thereafter, appellant No.1 Ramswaroop inflicted axe blow upon the head of Kallu with intention to kill him and appellant No.2 Ramesh inflicted lathi blow on the head of Kallu and when Shivlal came to rescue him, then appellant No.3 Hemant inflicted spade blow as a result whereof, blood started oozing and Karibai (PW1) as well as complainant Mahendra Singh Meena (PW8) along with Dheeraj (PW2) and Ishwar (PW4) were beaten when they intervened the matter. On receiving information of the said incident, the police reached spot and thereafter, injured along with Shivlal & Kallu were brought to the hospital. Shivlal died

on the spot while Kallu died on the way while bringing him to Kumbhraj Hospital. The dead body of both deceased thereafter were sent for postmortem. Complainant Mahendra Singh Meena (PW8) lodged a complaint Exhibit P8, on the basis of which FIR at Crime No.160/2008 for offence under Sections 302, 307, 324, 323/34 of IPC was registered against accused persons. The matter was investigated and after completion of investigation and other formalities, the police filed a charge-sheet u/S 302/34 of IPC (two counts) and u/S 323/34 of IPC (four counts) against accused appellants

(3) The accused persons were charged with aforesaid offence which was abjured by them and claimed for trial. In their defence, they pleaded that they have been falsely implicated and on the alleged date of incident, they were not present at the place of occurrence. Appellants have got examined Rambharose (DW-1), Ramhet (DW-2) and Badrilal (DW-3) in their defence.

(4) Prosecution, in order to prove its case, examined as many as thirteen witnesses viz. PW1 Karibai, PW2 Dheeraj Singh, PW3 Kalyan, PW4 Ishwar, PW5 Anitabai, PW6 Govind Singh, PW7 Vijay Singh, PW8 Mahendra, PW9 Dr.Sudip Arora, PW10 K.S. Bhadauriya, PW11 Dr. A.D. Vinchurkar, PW12 Harnam Singh and PW13 Dr. Yogesh Shakya.

(5) The Trial Court, after evaluating the prosecution evidence, convicted and sentenced the appellants for offences, as

mentioned in para 1 of this judgment.

(6) It is contended on behalf of appellants that the impugned judgment is bad in law and against the settled principles of law. The Trial Court has committed an error in convicting appellants by holding that appellants No.1 and 3 Ramswaroop and Hemant were armed with sharp edged weapons, but there is no injury caused from sharp edged weapon either on the body of deceased or any of the injured persons and the aforesaid fact is duly corroborated by medical evidence, which reflects that the injuries were caused by hard and blunt object, not sharp edged weapon. It is further contended that the Trial Court did not consider the fact that there was previous enmity between the accused and complainant party and if defence of the accused is found to be probable and reasonable, then due weightage should be given to accused. The Trial Court did not consider this aspect and the prosecution has not been able to explain the injuries sustained by appellant No.2 Ramesh and same has also been corroborated by defence witnesses. Although there are some contractions and omission in the statements of prosecution witnesses and oral evidence is belied by the medical evidence, but the trial Court has wrongly convicted and sentenced the appellants vide impugned judgment. Hence, it is prayed that same deserves to be set aside.

(7) *Per cont*ra, the learned State Counsel opposed the

contentions and submitted that the trial Court has rightly convicted the appellants and awarded sentence. Hence, no case is made out for interference and present criminal appeal deserves dismissal.

(8) From bare perusal of impugned record, it is apparent that Dr. Yogesh Shakya (PW-13) in his deposition stated that on 10-06-2008, he was posted as Medical Officer in CHC, Kumbhraj and on the same date, he had conducted medical examination of Kallu (since deceased), son of Shivlal and found two injuries over the head, one at chest and another at right hand and the same were caused by hard and blunt object. Duration was within 24 hours of the examination. He advised X-ray for aforesaid injuries. Report is Ex. P32.

Dr. Yogesh Shakya (PW-13) in his deposition further stated that on the same date, he has also examined injured Ishwar (PW4), the son of Shivlal, wherein he found injuries over his left hand, right side of back, left side of chest and on left thigh. The aforesaid injuries were caused by hard & blunt object. His MLC Report is Ex. P33. Dr. Shakya also conducted MLC of injured Dheeraj Singh (PW2) on the same day, wherein he found injury over right leg of injured which was caused by hard & blunt object. MLC report is Ex. P34.

Dr. Yogesh Shakya (PW13) in his deposition further stated that on the aforesaid date, he had also conducted MLC of injured

Karibai (PW1) the wife of Shivlal, wherein he found an injury over her right hand and also found incised wound over the head. The aforesaid injuries were caused by hard and blunt object. Duration was within 24 hours of the examination. Her MLC report is Ex.P35.

Dr. Yogesh Shakya (PW13) in his deposition further stated that on the same date, he had examined injured complainant Mahendra Singh Meena (PW8) wherein he found one incised wound over left hand, one incised wound over the head, one abrasion on right hand and at left thigh of injured Mahendra Singh Meena. The aforesaid injuries were caused by hard and blunt object. Duration was within 24 hours of examination. His MLC report is Ex.P36.

(9) Dr. Yogesh Shakya (PW-13) in his evidence deposed that on 15-6- 2008, he had also examined injured (herein appellant-accused No.3 Ramesh) wherein he found abrasion over his back and left side of shoulder & one abrasion on right side of chest of accused appellant No.3 Ramesh. The aforesaid injuries were caused by hard and blunt object within 5 to 7 days of examination. His MLC report is Ex.P37. According to opinion of Dr. Shakya, all the injuries sustained by appellant No.3 Ramesh were simple in nature. In para 16 of his cross-examination, Dr. Shakya admitted that the injuries sustained by appellant No.3 Ramesh may be caused either due to run away or fall on the

ground.

(10) Dr. A.D. Vinchurkar (PW11) in his statement deposed that on 10-06-2008, he was posted as Medical Officer at CHC, Kumbhraj and on said date, on receipt of requisition form of deceased Shivlal, he had conducted postmortem of deceased Shivral wherein he found grievous hurt over occipital region and abrasions over the chest of deceased Shivlal. Injury No.1 was grievous and injury No.2 was simple in nature. This witness has further deposed that deceased Shivlal died due to failure of heart and respiratory system which was the result of coma and shock of the aforesaid injuries caused over the head of deceased. His postmortem report is Ex. P28.

(11) Dr. Sudip Arora (PW-9) has stated in his deposition that on 11-06-2006 he was posted as Medical Officer at CHC, Kumbhraj and after receiving requisition form Ex.P11 he had conducted postmortem of deceased Kallu son of Shivlal wherein he found one bruise over the left shoulder and back, two incised wounds which were grievous in nature found over the head of deceased. Occipital bone was fractured, brain membrane was also ruptured of deceased Kallu. The aforesaid injuries were caused by hard and blunt object. Duration was within 12 to 24 hours of postmortem. This witness further deposed that deceased Kallu died due to failure of heart and respiratory system which was the result of excessive bleeding caused due to aforesaid

brain injuries. His postmortem report is Ex. P12.

(12) Before adverting to the merits of the case, it would be appropriate to throw light on the relevant provisions of Sections 299 and 300 of Indian Penal Code.

The Law Commission of United Kingdom in its 11th Report proposed the following test :

> "The standard test of 'knowledge' is, Did the person whose conduct is in issue, either knows of the relevant circumstances or has no substantial doubt of their existence?"
>
> *[See Text Book of Criminal Law by Glanville Wiliams (p.125)]*

*"*Therefore, having regard to the meaning assigned in criminal law the word "knowledge" occurring in clause Secondly of Section 300 IPC imports some kind of certainty and not merely a probability. Consequently, it cannot be held that the appellants caused the injury with intention of causing such bodily injury as the appellants knew to be likely to cause death of deceased. So, clause Secondly of Section 300 IPC will also not apply."

The enquiry is then limited to the question whether the offence is covered by clause Thirdly of Section 300 IPC. This clause, namely, clause Thirdly of Section 300 IPC reads as under:

> "Culpable homicide is murder, if the act by which the death is caused is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death."

The argument that the accused had no intention to cause death is wholly fallacious for judging the scope of clause Thirdly of Section 300 IPC as the words "intention of causing death" occur in clause Firstly and not in clause Thirdly. An offence would still fall within clause Thirdly even though the offender did not intend to cause death so long as the death ensues from the intentional bodily injury and the injuries are sufficient to cause death of deceased in the ordinary course of nature. This is also borne out from illustration (c) to Section 300 IPC which is being reproduced below:-

> "(c) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death."

Therefore, the contentions advanced in the present case and which are frequently advanced that the accused had no intention of causing death of deceased is wholly irrelevant for deciding whether the case falls in clause Thirdly of Section 300 IPC.

The scope and ambit of clause Thirdly of Section 300 IPC was considered by the Supreme Court in the decision in **Virsa Singh Vs. State of Punjab** reported in **AIR 1958 SC 465** and the principle enunciated therein explains the legal position succinctly. The accused Virsa Singh was alleged to have given a single spear blow and the injury sustained by the deceased was

"a punctured wound 2"x =" transverse in direction on the left side of the abdominal wall in the lower part of the iliac region just above the inguinal canal. Three coils of intestines were coming out of the wound." After analysis of the clause Thirdly, it was held: -

"The prosecution must prove the following facts before it can bring a case under S. 300 "Thirdly"; First, it must establish, quite objectively, that a bodily injury is present; Secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.

Once these three elements are proved to be present, the enquiry proceeds further and, Fourthly, it must be proved that the injury of the type, just described, made up of the three elements set out above, is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender. Once these four elements are established by the prosecution (and, of course, the burden is on the prosecution throughout), the offence is murder under S. 300 "Thirdly". It does not matter that there was no intention to cause death, or that there was no intention even to cause an injury of a kind that is

sufficient to cause death in the ordinary course of nature (there is no real distinction between the two), or even that there is no knowledge that an act of that kind will be likely to cause death. Once the intention to cause the bodily injury actually found to be present is proved, the rest of the enquiry is purely objective and the only question is whether, as a matter of purely objective inference, the injury is sufficient in the ordinary course of nature to cause death."

(13) In the case of **Arun Nivalaji More vs. State of Maharashtra (Case No. Appeal (Cri.) 1078-1079 of 2005)**, it has been observed as under :-

> "**11**. First it has to be seen whether the offence falls within the ambit of Section 299 IPC. If the offence falls under Section 299 IPC, a further enquiry has to be made whether it falls in any of the clauses, namely, clauses 'Firstly' to 'Fourthly' of Section 300 IPC. If the offence falls in any one of these clauses, it will be murder as defined in Section 300IPC, which will be punishable under Section 302 IPC. The offence may fall in any one of the four clauses of Section 300 IPC yet if it is covered by any one of the five exceptions mentioned therein, the culpable homicide committed by the offender would not be murder and the offender would not be liable for conviction under Section 302 IPC. A plain reading of Section 299 IPC will show that it contains three clauses, in two clauses it is the intention of the offender which is relevant and is the dominant factor and in the third clause the knowledge of the offender which is relevant and is the dominant factor. Analyzing Section 299 as aforesaid, it becomes clear that a person commits culpable homicide if the act by which the death is caused is done
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> (i) with the intention of causing death; or
>
> (ii) with the intention of causing such bodily injury as is likely to cause death; or
>
> (iii) with the knowledge that the act is likely

to cause death."

(14) If the offence is such which is covered by any one of the clauses enumerated above, but does not fall within the ambit of clauses Firstly to Fourthly of Section 300 IPC, it will not be murder and the offender would not be liable to be convicted under Section 302 IPC. In such a case if the offence is such which is covered by clauses (i) or (ii) mentioned above, the offender would be liable to be convicted under Section 304 Part I IPC as it uses the expression "if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death" where intention is the dominant factor. However, if the offence is such which is covered by clause (iii) mentioned above, the offender would be liable to be convicted under Section 304 Part II IPC because of the use of the expression "if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death" where knowledge is the dominant factor.

What is required to be considered here is whether the offence committed by the appellant falls within any of the clauses of Section 300 IPC.

Having regard to the facts of the case it can legitimately be urged that clauses Firstly and Fourthly of Section 300 IPC were not attracted. The expression "the offender knows to be likely to

cause death" occurring in clause Secondly of Section 300 IPC lays emphasis on knowledge. The dictionary meaning of the word 'knowledge' is the fact or condition of being cognizant, conscious or aware of something; to be assured or being acquainted with. In the context of criminal law the meaning of the word in Black's Law Dictionary is as under: -

> "An awareness or understanding of a fact or circumstances; a state of mind in which a person has no substantial doubt about the existence of a fact. It is necessary ... to distinguish between producing a result intentionally and producing it knowingly. Intention and knowledge commonly go together, for he who intends a result usually knows that it will follow, and he who knows the consequences of his act usually intends them. But there may be intention without knowledge, the consequence being desired but not foreknown as certain or even probable. Conversely, there may be knowledge without intention, the consequence being foreknown as the inevitable concomitant of that which is desired, but being itself an object of repugnance rather than desire, and therefore not intended."

In Blackstone's Criminal Practice the import of the word 'knowledge' has been described as under: -

> 'Knowledge' can be seen in many ways as playing the same role in relation to circumstances as intention plays in relation to consequences. One knows something if one is absolutely sure that it is so although, unlike intention, it is of no relevance whether one wants or desires the thing to be so. Since it is difficult ever to be absolutely certain of anything, it has to be accepted that a person who feels 'virtually certain' about something can equally be regarded as knowing it."

(15) Section 299 of Indian Penal Code runs as under :-

> "**299. Culpable homicide**.-- Wheoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is

likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide."

(16) Section 299 of IPC says, whoever causes death by doing an act with the bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide. Culpable homicide is the first kind of unlawful homicide. It is the causing of death by doing :

(i) an act with the intention of causing death;
(ii) an act with the intention of causing such bodily injury as is likely to cause death; or
(iii) an act with the knowledge that it is was likely to cause death Without one of these elements, an act, though it may be by its nature criminal and may occasion death, will not amount to the offence of culpable homicide. 'Intent and knowledge' as the ingredients of Section 299 postulate, the existence of a positive mental attitude and the mental condition is the special *mens rea* necessary for the offence. The knowledge of third condition contemplates knowledge of the likelihood of the death of the person. Culpable homicide is of two kinds : one, culpable homicide amounting to murder, and another, culpable homicide not amounting to murder. In the scheme of the Indian Penal Code, culpable homicide is genus and murder is species. All murders are culpable homicide, but not *vice versa*. Generally speaking, culpable homicide *sans* the special characteristics of murder is culpable homicide not amounting to murder. In this section, both the expressions 'intent' and 'knowledge' postulate the existence of a positive mental attitude which is of different degrees.

(15) Section 300 of Indian Penal Code runs as under :-

"**300. Murder.--** Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or--

Secondly.-- If it is done with the intention of

> causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or--
>
> *Thirdly*.-- If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or- *Fourthly*.-- If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid."

(16) "Culpable Homicide" is the first kind of unlawful homicide. It is the causing of death by doing ;(i) an act with the intention to cause death; (ii) an act with the intention of causing such bodily injury as is likely to cause death; or, (iii) an act with the knowledge that it was likely to cause death.

(17) Indian Penal Code recognizes two kinds of homicide :(1) Culpable homicide, dealt with between Sections 299 and 304 of IPC (2) Not-culpable homicide, dealt with by Section 304-A of IPC. There are two kinds of culpable homicide; (i) Culpable homicide amounting to murder (Section 300 read with Section 302 of IPC), and (ii) Culpable homicide not amounting to murder (Section 304 of IPC).

(18) A bare perusal of the Section makes it crystal clear that the first and the second clauses of the section refer to intention apart from the knowledge and the third clause refers to knowledge alone and not the intention. Both the expression "intent" and "knowledge" postulate the existence of a positive

mental attitude which is of different degrees. The mental element in culpable homicide i.e., mental attitude towards the consequences of conduct is one of intention and knowledge. If that is caused in any of the aforesaid three circumstances, the offence of culpable homicide is said to have been committed.

(19) There are three species of *mens rea* in culpable homicide. (1) An intention to cause death; (2) An intention to cause a dangerous injury; (3) Knowledge that death is likely to happen.

(20) The fact that the death of a human being is caused is not enough unless one of the mental state mentioned in ingredient of the Section is present. An act is said to cause death results either from the act directly or results from some consequences necessarily or naturally flowing from such act and reasonably contemplated as its result. Nature of offence does not only depend upon the location of injury by the accused, this intention is to be gathered from all facts and circumstances of the case. If injury is on the vital part, i.e., chest or head, according to medical evidence this injury proved fatal. It is relevant to mention here that intention is question of fact which is to be gathered from the act of the party. Along with the aforesaid, ingredient of Section 300 of IPC are also required to be fulfilled for commission of offence of murder.

(21) In the scheme of Indian Penal Code, “Culpable homicide” is genus and “murder” is its specie. All “Murder” is “culpable

homicide" but not vice versa. Speaking generally 'culpable homicide sans special characteristics of murder' if culpable homicide is not amounting to murder.

(22) In the case of **Anda vs. State of Rajasthan** reported in **1966 CrLJ 171,** while considering "third" clause of Section 300 of IPC, it has been observed as under:-

> "It speaks of an intention to cause bodily injury which is sufficient in the ordinary course of nature to cause death. The emphasis here is on sufficiency of injury in the ordinary course of nature to cause death. The sufficiency is the high probability of death in the ordinary way of nature and when this exists and death ensues and causing of such injury was intended, the offence is murder. Sometimes the nature of the weapon used, sometimes the part of the body on which the injury is caused, and sometimes both are relevant. The determinant factor is the intentional injury which must be sufficient to cause death in the ordinary course of nature."

(23) In the case of **Mahesh Balmiki vs. State of M.P.** reported in **(2000) 1 SCC 319,** while deciding whether a single blow with a knife on the chest of the deceased would attract Section 302 of IPC, it has been held thus :-

> "There is no principle that in all cases of single blow Section 302 I.P.C. is not attracted. Single blow may, in some cases, entail conviction under Section 302 I.P.C., in some cases under Section 304 I.P.C and in some other cases under Section 326 I.P.C. The question with regard to the nature of offence has to be determined on the facts and in the circumstances of each case. The nature of the injury, whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention or knowledge of the offender and

> the offence committed by him. In the instant case, the deceased was disabled from saving himself because he was held by the associates of the appellant who inflicted though a single yet a fatal blow of the description noted above. These facts clearly establish that the appellant had intention to kill the deceased. In any event, he can safely be attributed knowledge that the knife blow given by him is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death."

(24) In the case of **Dhirajbhai Gorakhbhai Nayak vs. State of Gujarat** reported in **(2003) 9 SCC 322**, it has been observed as under :-

> "The Fourth Exception of Section 300, IPC covers acts done in a sudden fight. The said exception deals with a case of prosecution not covered by the first exception, after which its place would have been more appropriate. The exception is founded upon the same principle, for in both there is absence of premeditation. But, while in the case of Exception 1 there is total deprivation of self-control, in case of Exception 4, there is only that heat of passion which clouds men's sober reason and urges them to deeds which they would not otherwise do. There is provocation in Exception 4 as in Exception 1; but the injury done is not the direct consequence of that provocation. In fact Exception 4 deals with cases in which notwithstanding that a blow may have been struck, or some provocation given in the origin of the dispute or in whatever way the quarrel may have originated, yet the subsequent conduct of both parties puts them in respect of guilt upon equal footing. A 'sudden fight' implies mutual provocation and blows on each side. The homicide committed is then clearly not traceable to unilateral provocation, nor in such cases could the whole blame be placed on one side. For if it were so, the Exception more appropriately applicable would be Exception 1. There is no previous deliberation or determination to fight. A fight suddenly takes place, for which both parties are more or less to be blamed. It may be that one of them starts it, but if the other had not aggravated it by his own conduct it would not have taken the serious turn it did. There is then mutual

> provocation and aggravation, and it is difficult to apportion the share of blame which attaches to each fighter. The help of Exception 4 can be invoked if death is caused (a) without premeditation, (b) in a sudden fight; (c) without the offender's having taken undue advantage or acted in a cruel or unusual manner; and (d) the fight must have been with the person killed. To bring a case within Exception 4 all the ingredients mentioned in it must be found. It is to be noted that the 'fight' occurring in Exception 4 to Section 300, IPC is not defined in the IPC. It takes two to make a fight. Heat of passion requires that there must be no time for the passions to cool down and in this case, the parties have worked themselves into a fury on account of the verbal altercation in the beginning. A fight is a combat between two and more persons whether with or without weapons. It is not possible to enunciate any general rule as to what shall be deemed to be a sudden quarrel. It is a question of fact and whether a quarrel is sudden or not must necessarily depend upon the proved facts of each case. For the application of Exception 4, it is not sufficient to show that there was a sudden quarrel and there was no premeditation. It must further be shown that the offender has not taken undue advantage or acted in cruel or unusual manner. The expression 'undue advantage' as used in the provision means 'unfair advantage'."

(25) In the case of **Pulicherla Nagaraju @ Nagaraja vs. State of AP** reported in **(2006) 11 SCC 444**, while deciding whether a case falls under Section 302 or 304 Part-I or 304 Part-II, IPC, it was held thus :-

> "Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters plucking of a fruit, straying of a cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no

> intention. There may be no pre-meditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under section 302, are not converted into offences punishable under section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances : (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any pre- meditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

(26) In the case of **Sangapagu Anjaiah v. State of A.P. (2010) 9 SCC 799,** Hon'ble Apex Court while deciding the question whether a blow on the skull of the deceased with a crowbar would attract Section 302 IPC, held thus**:-**

> "**16.** In our opinion, as nobody can enter into the mind of the accused, his intention has to be gathered from the weapon used, the part of the body chosen for the assault and the nature of the injuries caused. Here, the appellant had chosen a crowbar as the weapon of

offence. He has further chosen a vital part of the body i.e. the head for causing the injury which had caused multiple fractures of skull. This clearly shows the force with which the appellant had used the weapon. The cumulative effect of all these factors irresistibly leads to one and the only conclusion that the appellant intended to cause death of the deceased."

(27) In the case of **State of Rajasthan v. Kanhaiyalal** reported in **(2019) 5 SCC 639,** this it has been held as follows:-

"**7.3** In **Arun Raj [Arun Raj v. Union of India, (2010) 6 SCC 457 : (2010) 3 SCC (Cri) 155]** this Court observed and held that there is no fixed rule that whenever a single blow is inflicted, Section 302 would not be attracted. It is observed and held by this Court in the aforesaid decision that nature of weapon used and vital part of the body where blow was struck, prove beyond reasonable doubt the intention of the accused to cause death of the deceased. It is further observed and held by this Court that once these ingredients are proved, it is irrelevant whether there was a single blow struck or multiple blows.

7.4 ***In Ashokkumar Magabhai Vankar [Ashokkumar Magabhai Vankar v. State of Gujarat,*** **(2011) 10 SCC 604 : (2012) 1 SCC (Cri) 397]** , the death was caused by single blow on head of the deceased with a wooden pestle. It was found that the accused used pestle with such force that head of the deceased was broken into pieces. This Court considered whether the case would fall under Section 302 or Exception 4 to Section 300 IPC. It is held by this Court that the injury sustained by the deceased, not only exhibits intention of the accused in causing death of victim, but also knowledge of the accused in that regard. It is further observed by this Court that such attack could be none other than for causing death of victim. It is observed that any reasonable person, with any stretch of imagination can come to conclusion that such injury on such a vital part of the body, with such a weapon, would cause death.

7.5 A similar view is taken by this Court in the recent decision in Leela Ram (supra) and after considering catena of decisions of this Court on the issue on hand i.e. in case of a single blow, whether case falls under Section 302 or Section 304 Part I or Section

304 Part II, this Court reversed the judgment and convicted the accused for the offence under Section 302 IPC. In the same decision, this Court also considered Exception 4 of Section 300 IPC and observed in para 21 as under: (SCC para 21)

"**21**. Under Exception 4, culpable homicide is not murder if the stipulations contained in that provision are fulfilled. They are: (i) that the act was committed without premeditation; (ii) that there was a sudden fight; (iii) the act must be in the heat of passion upon a sudden quarrel; and (iv) the offender should not have taken undue advantage or acted in a cruel or unusual manner."

(28) In the case of **Bavisetti Kameswara Rao v. State of A.P.** reported in **(2008) 15 SCC 725,** it is observed in paragraphs 13 and 14 as under:-

"**13.** It is seen that where in the murder case there is only a single injury, there is always a tendency to advance an argument that the offence would invariably be covered under Section 304 Part II IPC. The nature of offence where there is a single injury could not be decided merely on the basis of the single injury and thus in a mechanical fashion. The nature of the offence would certainly depend upon the other attendant circumstances which would help the court to find out definitely about the intention on the part of the accused. Such attendant circumstances could be very many, they being (i) whether the act was premeditated; (ii) the nature of weapon used; (iii) the nature of assault on the accused. This is certainly not an exhaustive list and every case has to necessarily depend upon the evidence available. As regards the user of screwdriver, the learned counsel urged that it was only an accidental use on the spur of the moment and, therefore, there could be no intention to either cause death or cause such bodily injury as would be sufficient to cause death. Merely because the screwdriver was a usual tool used by the accused in his business, it could not be as if its user would be innocuous.

14. In **State of Karnataka Vedanayagam [(1995) 1 SCC 326 : 1995 SCC (Cri) 231]** this Court considered the usual argument of a single injury not being

sufficient to invite a conviction under Section 302 IPC. In that case the injury was caused by a knife. The medical evidence supported the version of the prosecution that the injury was sufficient, in the ordinary course of nature to cause death. The High Court had convicted the accused for the offence under Section 304 Part II IPC relying on the fact that there is only a single injury. However, after a detailed discussion regarding the nature of injury, the part of the body chosen by the accused to inflict the same and other attendant circumstances and after discussing clause Thirdly of Section 300 IPC and further relying on the decision in Virsa Singh vs. State of Punjab [AIR 1958 SC 465] , the Court set aside the acquittal under Section 302 IPC and convicted the accused for that offence. The Court (in **Vedanayagam case [(1995) 1 SCC 326 : 1995 SCC (Cri) 231] , SCC p. 330, para 4)** relied on the observation by Bose, J. in Virsa Singh case **[AIR 1958 SC 465]** to suggest that: (Virsa Singh case **[AIR 1958 SC 465],** AIR p. 468, para 16)

"16. With due respect to the learned Judge he has linked up the intent required with the seriousness of the injury, and that, as we have shown, is not what the section requires. The two matters are quite separate and distinct, though the evidence about them may sometimes overlap."

The further observation in the above case were: **(Virsa Singh case [AIR 1958 SC 465]** , AIR p. 468, paras 16 & 17)

"**16.** The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course, the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the

> circumstances warrant an opposite conclusion. But whether the intention is there or not is one of fact and not one of law. Whether the wound is serious or otherwise, and if serious, how serious, is a totally separate and distinct question and has nothing to do with the question whether the prisoner intended to inflict the injury in question.…
>
> **17.** It is true that in a given case the enquiry may be linked up with the seriousness of the injury. For example, if it can be proved, or if the totality of the circumstances justify an inference, that the prisoner only intended a superficial scratch and that by accident his victim stumbled and fell on the sword or spear that was used, then of course the offence is not murder. But that is not because the prisoner did not intend the injury that he intended to inflict to be as serious as it turned out to be but because he did not intend to inflict the injury in question at all. His intention in such a case would be to inflict a totally different injury. The difference is not one of law but one of fact."

(29) On the basis of aforesaid medical evidence available on record, it is apparent that deceased Shivpal died due to failure of heart and respiratory system which was the result of coma and shock of the aforesaid injuries caused over the head of deceased whereas, deceased Kallu died due to failure of heart and respiratory system which was the result of excessive bleeding caused due to aforesaid brain injuries. Therefore, the injuries sustained by both deceased Shivlal and Kallu were sufficient to cause of their death in the ordinary course of nature.

(30) We shall also go back into the history to understand Section 34 of IPC as it stood at the inception and as it exists now. Generally speaking, Section 34 IPC provides an acts done by several persons in furtherance of common intention. When a

criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

(31) In the recent decision of **Jasdeep Singh alias Jassu vs. State of Punjab** decided on 7th January, 2022 in Criminal Appeal No.1584 of 2021 (Arising Out of SLP (Crl) No. 1816 of 2019) the Hon'ble Apex Court has observed as under in detail:-

> **"19.** On a comparison, one could decipher that the phrase "in furtherance of the common intention" was added into the statute book subsequently. It was first coined by Chief Justice Barnes Peacock presiding over a Bench of the Calcutta High Court, while delivering its decision in *Queen v. Gorachand Gope, (1866 SCC OnLine Cal 16)* which would have probably inspired and hastened the amendment to Section 34 IPC, made in 1870. The following passage may lend credence to the aforesaid possible view:
>
> > "It does not follow that, because they were present with the intention of taking him away, that they assisted by their presence in the beating of him to such an extent as to cause death. If the object and design of those who seized Amordi was merely to take him to the thannah on a charge of theft, and it was no part of the common design to beat him, they would not all be liable for the consequence of the beating merely because they were present. It is laid down that, when several persons are in company together engaged in one common purpose, lawful or unlawful, and one of them, without the knowledge or consent of the others, commits an offence, the others will not be involved in the guilt, unless the act done was in some manner in furtherance of the common intention. It is also said, although a man is present when a felony is committed, if he take no part in it, and do not act in concert with those who commit it, he will not be a principal merely because he did not endeavour to prevent it or to apprehend the felon. But if several

persons go out together for the purpose of apprehending a man and taking him to the thannah on a charge of theft, and some of the party in the presence of the others beat and ill-treat the man in a cruel and violent manner, and the others stand by and look on without endeavouring to dissuade them from their cruel and violent conduct, it appears to me that those who have to deal with the facts might very properly infer that they were all assenting parties and acting in concert, and that the beating was in furtherance of a common design. I do not know what the evidence was, all that I wish to point out is, that all who are present do not necessarily assist by their presence every act that is done in their presence, nor are consequently liable to be punished as principals."

20. Before we deal further with Section 34 IPC, a peep at Section 33 IPC may give a better understanding. Section 33 IPC brings into its fold a series of acts as that of a single one. Therefore, in order to attract Section 34 to 39 IPC, a series of acts done by several persons would be related to a single act which constitutes a criminal offense. A similar meaning is also given to the word 'omission', meaning thereby, a series of omissions would also mean a single omission. This provision would thus make it clear that an act would mean and include other acts along with it.

21. Section 34 IPC creates a deeming fiction by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him at par with the one who actually committed the

offence. 22.What is required is the proof of common intention. Thus, there may be an offence without common intention, in which case Section 34IPC does not get attracted.

23. It is a team effort akin to a game of football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

24.The intendment of Section 34 IPC is to remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act "in furtherance of the said intention". One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offense.

25.Normally, in an offense committed physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offense consists of diverse acts done at different times and places. Therefore, it has to be seen on a case to case basis.

26.The word "furtherance" indicates the existence of aid or assistance in producing an effect in future. Thus, it has to be construed as

an advancement or promotion.

27.There may be cases where all acts, in general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offense. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

28.The existence of common intention is obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court."

(32) The scope and essence of Section 34 of IPC can be borne out of excerpts from judgments/decisions mentioned as under:-

In the case of **Suresh v State of U.P. (2001) 3 SCC 673,** it has been held as under:-

"**24.** Looking at the first postulate pointed out above, the accused who is to be fastened with

liability on the strength of Section 34 IPC should have done some act which has nexus with the offence. Such an act need not be very substantial, it is enough that the act is only for guarding the scene for facilitating the crime. The act need not necessarily be overt, even if it is only a covert act it is enough, provided such a covert act is proved to have been done by the co-accused in furtherance of the common intention. Even an omission can, in certain circumstances, amount to an act. This is the purport of Section 32 IPC. So, the act mentioned in Section 34 IPC need not be an overt act, even an illegal omission to do a certain act in a certain situation can amount to an act, e.g. a co-accused, standing near the victim face to face saw an armed assailant nearing the victim from behind with a weapon to inflict a blow. The co-accused, who could have alerted the victim to move away to escape from the onslaught deliberately refrained from doing so with the idea that the blow should fall on the victim. Such omission can also be termed as an act in a given situation. Hence an act, whether overt or covert, is indispensable to be done by a co-accused to be fastened with the liability under the section. But if no such act is done by a person, even if he has common intention with the others for the accomplishment of the crime, Section 34 IPC cannot be invoked for convicting that person. In other words, the accused who only keeps the common intention in his mind, but does not do any act at the scene, cannot be convicted with the aid of Section 34 IPC. xxx xxx xxx

40. Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word “act” used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from

> the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in Satrughan Patar v. Emperor, AIR 1919 Pat 111 held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

In the case of **Lallan Rai v. State of Bihar, [(2003) 1 SCC 268],** it has been held as under:-

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

In the case of **Chhota Ahirwar v. State of M.P., [(2020) 4 SCC 126]** it has been held as under:-

> "**24.** Section 34 is only attracted when a specific criminal act is done by several persons in furtherance of the common intention of all, in which case all the offenders are liable for that criminal act in the same manner as the principal offender as if the act were done by all the offenders. This section does not whittle down the liability of the principal offender committing the principal act but additionally makes all other offenders liable. The essence of liability under Section 34 is simultaneous consensus of the minds of persons participating in the criminal act to bring about a particular result, which

> consensus can even be developed at the spot as held in Lallan Rai v. State of Bihar, (2003) 1 SCC 268. There must be a common intention to commit the particular offence. To constitute common intention, it is absolutely necessary that the intention of each one of the accused should be known to the rest of the accused."

In the case of **Barendra Kumar Ghosh v. King Emperor (AIR 1925 PC 1)** it has been held as under:-

> "..... the words of S. 34 are not to be eviscerated by reading them in this exceedingly limited sense. By S. 33 a criminal act in S. 34includes a series of acts and, further, "act" includes omissions to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By S. 37, when any offence is committed by means of several acts whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things "they also serve who only stand and wait". By S. 38, when several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act. Read together, these sections are reasonably plain. S. 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for "that act" and "the act" in the latter part of the section must include the whole action covered by 'a criminal act' in the first part, because they refer to it. S. 37 provides that, when several acts are done so as to result together in the commission of an offence, the doing of any one of them, with an intention to co-operate in the offence (which may not be the same as an intention common to all), makes the actor liable to be punished for the commission of

> the offence. S. 38 provides for different punishments for different offences as an alternative to one punishment for one offence, whether the persons engaged or concerned in the commission of a criminal act are set in motion by the one intention or by the other."

In the case of **Mehbub Shah v. Emperor (AIR 1945 PC 148)** it has been observed as under:-

> "....Section 34 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 S. 34 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…"

In the case of **Rambilas Singh & Ors. v. State of Bihar [(1989) 3 SCC 605]** it has been observed as under:-

> "7…It is true that in order to convict persons vicariously under section 34 or section 149 IPC, it is not necessary to prove that each and every one of them had indulged in overt acts. Even so, there must be material to show that the overt act or acts of one or more of the accused was or were done in furtherance of the common

> intention of all the accused or in prosecution of the common object of the members of the unlawful assembly…"

In the case of **Krishnan & Another v. State of Kerala [(1996) 10 SCC 508], i**t has been observed as under:-

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

In the matter of **Surendra Chauhan v. State of M.P. [(2000) 4 SCC 110]** it has been held as under:-

> "11. Under Section 34 a person must be physically present at the actual commission of the crime for the purpose of facilitating or promoting the offence, the commission of which is the aim of the joint criminal venture…."

In the matter of **Gopi Nath @ Jhallar v. State of U.P. [(2001) 6 SCC 620]** it has been observed as under:-

> "8. …As for the challenge made to the conviction under Section 302 read with Section 23 IPC, it is necessary to advert to the salient principles to be kept into consideration and often reiterated by this Court, in the matter of invoking the aid of Section 34 IPC, before dealing with the factual aspect of the claim made on behalf of the appellant. Section 34 IPC has been held to lay down the rule of joint responsibility for criminal acts performed by plurality or persons who joined together in doing the criminal act, provided that such commission is in furtherance of the common intention of all of them. Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action – be it that it was not overt or was only covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of them participated and engaged themselves in furtherance of the common intention which might be of a pre-concerted or pre-arranged plan or one manifested or developed at the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case."

In the matter of **Ramesh Singh @ Photti v. State of A.P.** **[(2004) 11 SCC 305]** it has been held as under:-

> "12. …As a general principle in a case of criminal liability it is the primary responsibility of the person who actually commits the offence and only that person who has committed the crime can be held guilty. By introducing Section 34 in the Penal Code the legislature laid down the principle of joint liability in doing a criminal act. The essence of that liability is to be found in the existence of a common intention connecting the accused leading to the doing of a criminal act in furtherance of such intention. Thus, if the act is the result of a common intention, then every person who did the criminal act with that common intention would be responsible for the offence committed irrespective of the share which he had in its perpetration..... "

In the matter of **Nand Kishore V. State Of Madhya Pradesh [(2011) 12 SCC 120)]** it has been observed as under:-

> "**20**. A bare reading of this section shows that the section could be dissected as follows:
>
> (a) Criminal act is done by several persons;
>
> (b) Such act is done in furtherance of the common intention of all; and
>
> (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.
>
> In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of Section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the criminal act and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually

would arise. The criminal act, according to Section 34 IPC must be done by several persons. The emphasis in this part of the section is on the word "done". It only flows from this that before a person can be convicted by following the provisions of Section 34, that person must have done something along with other persons. Some individual participation in the commission of the criminal act would be the requirement. Every individual member of the entire group charged with the aid of Section 34 must, therefore, be a participant in the joint act which is the result of their combined activity.

21. Under Section 34, every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and "mens rea" as understood in criminal jurisprudence on the other. Common intention is not alike or identical to mens rea. The latter may be coincidental with or collateral to the former but they are distinct and different.

22.Section 34 also deals with constructive criminal liability. It provides that where a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it was done by him alone. If the common intention leads to the commission of the criminal offence charged, each one of the persons sharing the common

> intention is constructively liable for the criminal act done by one of them. (Refer to Brathi v. State of Punjab 1991 (1) SCC 519).
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> 23. Another aspect which the court has to keep in mind while dealing with such cases is that the common intention or state of mind and the physical act, both may be arrived at the spot and essentially may not be the result of any predetermined plan to commit such an offence. This will always depend on the facts and circumstances of the case…"

In the matter of **Shyamal Ghosh V. State of West Bengal [(2012) 7 SCC 646)]** it has been observed as under:-

> "87. Upon analysis of the above judgments and in particular the judgment of this Court in the case of Dharnidhar v. State of Uttar Pradesh, [(2010) 7 SCC 759], it is clear that Section 34 IPC applies where two or more accused are present and two factors must be established i.e. common intention and participation of the accused in the crime. Section 34 IPC, moreover, involves vicarious liability and therefore, if the intention is proved but no overt act was committed, the section can still be invoked. This provision carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others, if he had the common intention to commit the act. The phrase "common intention" means a pre-oriented plan and acting in pursuance to the plan, thus, common intention must exist prior to the commission of the act in a point of time. The common intention to give effect to a particular act may even develop on the spur of moment between a number of persons with reference to the facts of a given case."
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> 30. The aforesaid principle has also been dealt with in extenso by the Apex

Court in *Virendra Singh V. State of Madhya Prades ((2010) 8 SCC 407)* through the following paragraphs:

"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 prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged 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 prearranged 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. This has been clearly laid down by this Court in the case of *Amrik Singh & Ors. v. State of Punjab, 1972 (4) SCC (N) 42:1972 CriLJ 465.*

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 prearranged 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.

xxx xxx xxx

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 30 with the aid of section 34 IPC. Under the 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 (2) 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 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 Penal Code, two sections, namely, Sections 34 and 149, deal with them 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 prearranged 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 Russell 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 prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation 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."

(41) The well-established principle of law underlying provisions of Section 34 of IPC emerges from decision of ***Justice Vivian Bose in Pandurang, Tukia and Bhillia vs. The State of Hyderabad 1955 SCR (1) 1083*** wherein it has been held as under:-

> "**33.** Now in the case of Section 34 we think

it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all: Mahbub Shah v. King Emperor [72 IA 148 at 153 and 154]. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case: Barendra Kumar Ghosh v. King-Emperor [72 IA 148 at 153 and 154] and Mahbub Shah v. King-Emperor [52 IA 40 at 49] . As Their Lordships say in the latter case, “the partition which divides their bounds is often very thin: nevertheless, the distinction is real and substantial, and if overlooked will result in miscarriage of justice”. 34. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him and join him in the assault. There is then the necessary meeting of the minds. There is a pre-arranged plan however hastily formed and rudely conceived. But pre-arrangement there must be and premeditated concert. It is not enough, as in the latter Privy Council case, to have the same intention independently of each other, e.g., the

> intention to rescue another and, if necessary, to kill those who oppose." (emphasis supplied)

(42) Similarly, in the matter of **Virendra Singh v. State of MP (2010) 8 SCC407** the Hon'ble Apex Court has explained the ambit of words "in furtherance of common intention of all" and has observed as under:-

> "**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" imply a prearranged plan and acting in concert pursuant to the plan. It must be proved that the criminal act was done in concert pursuant to the prearranged 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 preconcert 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 prearranged 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. This has been clearly laid down by this Court in *Amrik Singh v. State of Punjab [(1972) 4 SCC (N) 42 : 1972 Cri LJ 465] .*"
>
> (43) Followings are fundamental principles underlying Section 34 of IPC:-

> "(i) Section 34 does not create a distinct offence, but is a principle of constructive liability;
> (ii) In order to incur a joint liability for an offence there must be a pre-arranged and pre-mediated concert between the accused persons for doing the act actually done;
> (iii) There may not be a long interval between the act and the pre-meditation and the plan may be formed suddenly. In order for Section 34 to apply, it is not necessary that the prosecution must prove an act was done by a particular person; and
> (iv) The provision is intended to cover cases where a number of persons act together and on the facts of the case, it is not possible for the prosecution to prove who actually committed the crime."

(43) The above fundamental principles have been adopted and applied by Hon'ble Apex Court in the matter of **Chhota Ahirwar v. State of MP (2020) 4 SCC 126** as under:-

> **"26.** To attract Section 34 of the Penal Code, no overt act is needed on the part of the accused if they share common intention with others in respect of the ultimate criminal act, which may be done by any one of the accused sharing such intention. *[See Asoke Basak [Asoke Basak v. State of Maharashtra, (2010) 10 SCC 660 : (2011) 1 SCC (Cri) 85] , SCC p. 669]. To quote from the judgment of the Privy Council in the famous case of Barendra Kumar Ghosh [Barendra Kumar Ghosh v. King Emperor, 1924 SCC OnLine PC 49 : (1924-25) 52 IA 40 : AIR 1925 PC 1]*, "they also serve who stand and wait".
> **27.** Common intention implies acting in concert. Existence of a prearranged plan has to be proved either from the conduct of the accused, or from circumstances or from any incriminating facts. It is not enough to have the same intention independently of each other."

(44) We have heard arguments advanced by learned counsel for the parties and carefully scanned the evidence brought on record in the light of findings returned in impugned judgment.

(45) Mahendra Singh Meena (PW-8) in his evidence deposed that one dynamo was stolen 4-6 months back of the incident wherein a false allegation was made. To resolve aforesaid dispute, Nathu Patel and the accused persons were called but the matter was not resolved. Accused Ramswaroop inflicted axe blow on the head of his brother Kallu. When Kallu fell down on the ground, accused Hemant inflicted injuries by means of spade on the head of Kallu. Accused Ramesh also inflicted lathi injuries to Kallu. This witness in para 2 of his statement deposed that when accused persons were beating Kallu, his father Shivlal who was working near a well came there for rescue. Accused Ramswaroop inflicted axe blow, Hemant inflicted spade blow, Ramesh inflicted lathi blow on his father Shivlal. This witness further deposed that he along with Dheeraj and Ishwar were present near the temple and intervened the matter. This witness further deposed that he had also sustained injury of axe on his body caused by accused Ramswaroop. Accused Ramswaroop also inflicted axe blow to his mother Karibai and all the accused inflicted injuries to his mother Karibai and Ishar. His father Shivlal died on the spot and Kallu died while bringing to Kumbharaj hospital along with other injured in a police vehicle

from where Kallu was referred to Guna and on the way, Kallu also died. This witness further deposed that police had prepared spot map Ex.P7. A report was lodged by him vide Ex.P8. He along with injured Ishwar, Dheeraj and his mother Karibai were medically examined. In his presence, *lash panchnama* Ex.P1 & Safina form Ex.P2 were prepared, carrying his signature from "A to A". In his presence, police had seized spade, axe and lathi from the possession of accused. Blood- stained and plain soil was also seized by police vide Ex.P9 carrying his signature from "A to A".

(46) Karibai (PW1) who is the wife of deceased Shivlal in her evidence deposed that accused Ramswaroop inflicted axe blow on the head of her son Kallu by which he fell down on the ground. She and her husband both rushed towards the spot to save her son. Thereafter, accused Ramswaroop inflicted axe blow, Hemant inflicted spade blow, Ramesh inflicted lathi blow at her husband Shivlal. All three accused persons also inflicted injuries to her son Kallu and thrown him on the road side. This witness further deposed that in the incident, she had also sustained injuries of axe. This witness further deposed that in the incident, Mahendra, Ishwar and his daughter-in-law were also sustained injuries caused by all accused persons. After half an hour, the police reached the spot and all the injured were referred to Kumbhraj Hospital from where her son Kallu was referred to Guna and died on the way. This witness in para 3 of her cross-

examination also deposed that all accused persons had committed marpeet with them. After sustaining lathi injury, Dheeraj (PW2) and Ishwar (PW4) both fled away. At that time, both her husband and son, namely, Shivlal and Kallu were lying on the ground. Anitabai (PW5) also supported the version of her mother-in-law Karibai & her evidence remained unchanged in her examination and cross-examination.

(47) Dheeraj Singh (PW2) in his evidence deposed that on the date of incident, there was a quarrel took place between complainant party and accused party near the Temple of village Chauna. Deceased Kallu was going to his hut and the accused persons obstructed his way and a quarrel took place over the dispute of return of dynamo or Rs.40,000/-. This witness also deposed that he had sustained injuries while he was intervening the matter. Ishwar (PW4) also supported testimony of Dheeraj Singh and his evidence remained unchanged in his examination-in-chief and cross-examination. Govind Singh (PW6) and Vijaysingh (PW7) in their evidence admitted that a quarrel took place over the dispute of return of dynamo or Rs.40,000/- and at the time of incident, they did not came out from their house due to fear in their minds.

(48) KS Bhadauriya (PW10) in his evidence deposed that on 10-06-2008 he was posted at Police Station Kumbhraj and on the said date, complainant had lodged a report vide Ex.P8. All the

injured were medically examined and the postmortem of both the deceased were conducted. Spot map Ex.P7 was prepared and blood-stained and plain soil was recovered from spot vide Ex.P9. Statements of the witnesses were recorded. The accused were arrested vide arrest memo Ex.P22 to Ex.P24 and thereafter they were interrogated. From the possession of accused Ramswaroop, Ramesh and Hemant, axe, lathi and spade were recovered respectively on the basis of their memorandum Ex.P25 to Ex.P27. Kalyan (PW3) is the witness of seizure memo prepared by the police in whose presence, axe, lathi and spade were seized from the possession of accused vide Ex.P3 to Ex.P5. Witness Harnam Singh (PW12) has also proved the seizure memo of sealed packets Ex.P30 and Ex.P31.

(49) Next contention of the counsel for the appellants that due to previous enmity over return of dynamo or Rs.40,000/- the appellants have been falsely implicated is concerned, it is well-established principle of law that the enmity or animosity is a double-edged weapon. It cuts both sides. It could be a ground for false implication and it could also be a ground for assault. Just because the witnesses are related to the deceased would be no ground to discard their testimony, even otherwise their testimony inspires confidence. Similarly, being relatives, it would be their endeavour to see that real culprits are punished and normally, they would not implicate wrong persons in the crime so as to

allow the real culprits to escape unpunished. It is, therefore, not a safe rule to reject prosecution evidence merely on the ground that complainant party and accused party were on inimical terms. In such a situation, it only puts the Court with solemn duty to make a deeper probe and scrutinize evidence with more than ordinary care which precaution has already been taken by trial Court while analyzing and accepting the evidence.

(50) So far as next contention of the appellants that although appellant No.2 Ramesh had sustained injuries in the incident and the prosecution did not explain such injuries on the body of appellant No.2 Ramesh is concerned, it is apparent from the evidence of Dr. Yogesh Shakya (PW13) who in para 16 of his cross-examination admitted that the injuries sustained by the appellant No.3 Ramesh may be caused either due to run away or fall on the ground. The prosecution is not obliged to explain the injuries on the person of accused in all cases and in all circumstances. It depends upon the facts and circumstances of each case whether prosecution case becomes reasonably doubtful for its failure to explain the injuries of accused. ***(See Bhaba Nanda Sharma vs. State of Assam, (1977) 4 SCC 396 : (AIR 1977 SC 2252).*** The prosecution is not called upon in all cases to explain injuries received by the accused. It is for the defence to put question to the prosecution witnesses regarding injuries of accused. When that is not done, there is no occasion for the

prosecution to explain the injuries on the person of accused. ***[See Ramlagan Singh vs. State of Bihar, (1973) 3 SCC 881.*** Therefore, the entire prosecution case cannot be thrown over-board simply because the prosecution do not explain the injuries on the person of accused. ***[See Bhagwan Tana Patil v. State of Maharashtra, (1974) 3 SCC 536].***

(51) So far as the next contention of counsel for the appellants that learned trial Court has not considered the evidence of Defence Witnesses is concerned, from perusal of evidence of DW1 Rambharosa, DW2 Ramhet and DW3 Badrilal, it is evident that there is no positive defence evidence led on behalf of appellants accused in order to prove that on the date of alleged incident they were not present on the scene of occurrence, therefore, the prosecution on the strength of sufficient and convincing evidence brought before the Court, has rightly established appellants guilty of commission of alleged offence and defence evidence produced on behalf of accused appears to be discarded, as they have tried to save the accused.

(52) On scrutinizing the entire record as well as the evidence of witnesses Mahendra (PW8), Karibai (PW1), Dheeraj (PW2), Ishwar (PW4) and Anitabai (PW5) it clearly establishes common intention of appellants of causing grievous hurt which are likely to cause death of both the deceased. In this context, no such fact has been disclosed in their cross-examination whereby their

evidence can be disbelieved. Statements of these witnesses have also been corroborated by medical evidence. Therefore, all the appellants are liable to be convicted under Section 302 of IPC with the aid of Section 34 of IPC and the trial Court has rightly convicted the appellants for the said offence. So far as the offence under Section 323 read with Section 34 of IPC is concerned, in the incident, four injured persons, namely, Ishwar, Dheeraj, Karibai and Mahendra were sustained injuries caused by appellants by means of their respective weapons while said injured persons were intervening the matter in order to save both the deceased and, therefore, considering the nature of injuries sustained by four injured as well as their MLC reports, all the appellants are liable to be convicted under Section 323 of IPC with the aid of Section 34 of IPC.

(53) As discussed above, we are of considered opinion that the prosecution having proved the charge of murder of both deceased levelled against the appellants and the Trial Court having meticulously dwelt upon the same, the impugned judgment of conviction and the order of sentence thereof cannot be faulted with as would warrant any interference. As a consequence thereof, the present appeal fails and is hereby **dismissed.** The impugned judgment of conviction and order of sentence dated 28-09-2011 passed by Additional Sessions Judge, Chachoda, Distt. Guna (MP) in Sessions Trial No.256/2008 is hereby

affirmed.

(54) Since all appellants No.1 Ramswaroop and appellant No.3 Hemant are on bail, therefore, their bail bonds and surety bonds are cancelled and they are directed to surrender immediately to the Trial Court concerned to serve out the remaining jail sentence. Similarly, appellant No.2 Ramesh is stated to be in jail, therefore, he shall remain in jail to serve out the remaining jail sentence awarded by the trial Court.

Let a copy of this judgment be sent to the concerning jail authorities forthwith and also a copy of this judgment along with record be sent to concerning Trial Court for information and compliance.

(G.S. Ahluwalia)
Judge

(Rajeev Kumar Shrivastava)
Judge

MKB