

For acts the unity of a
single



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For instance, A, B, C and D plan the abduction of E's wife for an immoral purpose. D goes to E's house in E's absence to detain E's wife at the house to see that she does not go out anywhere. While D is thus busy talking to E's wife, C comes round and says that he has heard that E has met an accident and while C and D are thus present, B comes round with a car saying that E has been taken to the hospital where they should all including E's wife, immediately rush up. Thus, deceiving E's wife, they take E's wife in the car to A's house where she is detained. Here each one of the confederates does a different act.

D's role is apparently the most innocent, but the behaviour of each of them is criminal which gives a criminal character to the whole series of acts. A, B, C and D share a common intention. The plan which they hatch up and in pursuance of which they do the different acts gives to the whole series of acts the unity of a single transaction.

The question requiring solution under such circumstances is whether such persons shall be liable for the whole series of acts as if such acts had been done by him alone or, to put it in other words, whether he would be liable for the acts not done by him, but done by his companions. Persons who join together to commit a crime are known as joint offenders. Suppose two men hold a third for cutting his throat and one of them cuts it. There can be no doubt that both of them are equally guilty. Principle of Joint Liability: Section 34 embodies a principle of joint liability.

Where two or more persons intentionally do an act jointly, it is just the same as if each of them had done it individually. Once it is found that a criminal

act was done in furtherance of the common intention of all, each of such person is liable for the criminal act as if it had been done by him alone. Section 34 is intended to meet a case in which it may be difficult to distinguish between the acts of the individual members of a party who act in furtherance of a common intention of all or to prove exactly what part was taken by each of them. The principle which the section embodies is participation in some action with the common intention of committing a crime. Once such participation is established Section 34 is at once attracted. Section 34 embodies the same principle that has been laid down very clearly in the English case—R v. Cruse.

In that case a police party went to arrest A in his house, where several other persons were also present. These persons in order to evade A's apprehension came out to drive the policemen. In the joint attack one of the members of the police party was killed, and it could not be found out as to who was the real offender. The court held that each of the attackers would be responsible in an equal measure for the criminal act, whether he actually committed it or not.

In order that this section may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. The language of the section does not bear out this contention. 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. Once the common intention is established the question as to who gave fatal blow is irrelevant. The Supreme Court in *Girija Shankar v. State of U. P.*, has

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observed : “ Section 34 of the Indian Penal Code has been enacted on the Principle of joint liability in the doing of a criminal act.

The Section is only a rule of evidence and does not create a substantive offence. The distinctive feature of this Section is the element of participation in action.” The Court further said that the true concept of Section 34 is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. The existence of a common intention amongst the participants in a crime is the essential element for application of this Section. The common intention must be to commit the particular crime, although the actual crime may be committed by anyone sharing intention.

Then only others can be held guilty. If there is common intention to commit murder although the actual fatal blow is given only by one of the confederates, the others who shared that intention would also be liable even though their acts did not result in death. In a case with a premeditated intention two accused persons assaulted the deceased with spears at the most vital part of the body.

Supreme Court justified the application of Section 34, I. P. C. Scope of the Section: Section 34 does not create a new offence. It simply gives recognition to the common sense principle that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. The liability is for the criminal act actually done and not for the common intent. In other words, as the Supreme Court has put it in a recent decision, is not by itself an offence.

But, it creates a joint and constructive liability for the crime committed in furtherance of such common intention. The section deals with the doing of separate acts, similar or diverse, by several persons if all are done in furtherance of the common intention of all. Each person is liable for the result of them all, as if he had done them himself. In *B. N. Srikantiah v.*

State of Mysore, the Supreme Court held: “ Section 34 is only a rule of evidence and does not create a substantive offence. It means that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done individually. Intention is a question of fact which is to be gathered from the acts of the parties”. Common intention to kill is clear from the circumstances that accused came together, armed, participated equally in abusing and assaulting and going away together. That there should be an appreciable passage of time between the formation of the intent and the act is not necessary for common intention, it may be formed at any time.

Individual liability for acts done in furtherance of common intention is incurred vicariously only when a criminal act is done by several persons in furtherance of the common intention of all. Where the sharing of a particular intention by more than one person to do a criminal act is not proved, Section 34 shall not be applicable. Accused Nos.

1 and 3 suddenly emerged out of darkness, accused No. 3 gave an axe-blow on the left arm of the deceased, while accused No. 1 gave an axe-blow on his abdomen and the latter injury resulted in his death.

These facts clearly show that there was common intention between accused Nos. 1. and 3 to cause the death of the deceased. In the dying declaration the deceased did not name accused No.

2 as one of his assailants. According to the eye-witness accused No. 2 was talking to the deceased when accused Nos. 1 and 3 attacked the deceased. Accused No. 2 neither had any weapon with him nor did he participate in the attack. Not a single blow was given by him to the deceased. The only thing attributed to accused No.

2 was that after accused Nos. 1 and 3 had given axe-blows to the deceased, accused No. 2 said, “ Don’t leave him. Kill him.” There is no reason why accused No. 2 should have tried to instigate accused Nos. 1 and 3 after they had delivered axe-blow to the deceased. It is also significant that neither accused No.

1 nor accused No. 3 delivered any further blows to the deceased pursuant to the alleged instigation by accused No. 2.

It shows that accused No. 2 was not a party to the common intention of accused Nos. 1 and 3 to kill the deceased nor had he anything to do with the attack on the deceased. The common intention referred to in Section 34 pre-supposes a prior concert, a pre-arranged plan, i. e.

, prior meeting of minds. This does not mean that there must be a long interval of time between formation of the common intention and the doing of the act. It may be sudden. But there must be pre-arrangement and pre-meditated concert. It is not enough to have the same intention.

The question whether in a proved situation all the individuals concerned there have simultaneously developed only an independent intention or whether a simultaneous consensus of their minds to bring about a particular result can be said to have been developed and thereby intended by all of them is one that has to be determined on the facts of each case. Same or similar intention is not to be confused with common intention. Persons having a common intention ' must have the same intention'. Same intention must be to make it common intention and be indicated in some way by words or acts between the persons who share it. Such intention may be inferred from circumstances. It is true that prior concert and arrangement can and indeed often must be determined from subsequent conduct. But the inference of the common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. The mere circumstance of a person being present on an unlawful occurrence does not raise a presumption of that person's complicity in an offence then committed so as to make Section 34 applicable.

In *Kacheru Singh v. State of UP.*, eleven persons were charged under Sections 148, 323 and 326 read with Section 149, I. P.

C. It was proved that out of them three accused had attacked the complainant in the first incident. The complainant ran away followed by the three accused; the complainant and his companions were again attacked by these three accused. The Sessions Judge acquitted eight accused and convicted three.

The High Court in revision held that as a result of the Trial Court's judgment the three accused could not be convicted under Sections 148, 323 and 326 read with Section 149 as the ingredients to establish the existence of an unlawful assembly were absent. The High Court, however, convicted these three accused under Sections 323 and 326 read with Section 34. In appeal the Supreme Court held that provisions of Section 34 were applicable. These accused assaulted the complainant in the first incident. They pursued the complainant and they persisted in assaulting him and deterring those who had come to his help.

The clear implication of this was that the assault in the second incident was the result of previous concert. The evidence to prove the common intention was the same which would have proved the common object of it had it been established that there had been an unlawful assembly. The Supreme Court held in, *Parasa Raja Manikyala Rao v. State of AP* that Section 34 really means that if two or more persons intentionally do a common thing jointly, it is just the same as if each of them had done it individually. The Supreme Court in case, *Nagarathimam v. State of Tamil Nadu*, observed that once it was held that appellants were liable to be convicted for their individual acts Section 34, I.

P. C. cannot be invoked.