

# Ingredients for it and not others; section 34



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Ingredients of Section 34: For the applicability of Section 34 following elements are necessary: (i) Criminal act; (ii) Done by several persons; (iii) In furtherance of common intention of all. In *Surendra Chauhan v. State of M. P.*, it was held that to apply this section, apart from the fact that there should be two or more accused, two facts must be established: (1) Common Intention (2) participation of the accused in the commission of an offence. (i) Criminal Act: The section speaks of a “criminal act” being done by several persons.

If the act in question is a lawful act, this section will not apply. Where four persons were exercising their right of private defence, they were engaged in a lawful act in the course of which one of them unlawfully caused death. The other accused could not be held responsible with the help of Section 34 for the reason that acts jointly done by them was a lawful and not a criminal act. Holding the same view the Supreme Court pointed out that the question of common intention could not arise in the circumstances and constructive liability of individual accused had to be ruled out. It means that if the act is a lawful and not a criminal act, and if in the course of such act any one of the persons jointly doing that act commits an offence, then only such person shall be liable for it and not others; Section 34 shall not apply. A “criminal act” is not the same thing as an “offence”. An offence is the result of a criminal act. A criminal act is not equivalent to an offence which is composed of a physical act, its effect and the intention or knowledge with which the physical act is done.

The words “criminal act” are wider than the words “offence” as defined in Section 40. A criminal act means the entire series of acts committed by

several persons resulting in something which is punishable under the Code or any other law. It indicates the unity of criminal behaviour which results in something for which an individual would be punishable if it were done by him alone. Section 33 lays down that an “ act” denotes as well a series of acts as a single act and omission denotes as well a series of omissions as a single omission. Section 32 says that words which refer to acts done extend also to illegal omissions. A ‘ criminal act’ in Section 34 includes a series of acts, omission to act being included within the meaning of the word ‘ act’, e. g. an omission to interfere in order to prevent a murder being done before one’s very eyes.

The criminal act in Section 34 means a single act as a series of acts. But a different view was held in the following cases, wherein it has been said that a criminal act must include at least two acts; if only one act has been done, Section 34 cannot apply. The part played by one of the several persons need be identical. “ Criminal acts” does not denote a single act but refers to a whole criminal transaction in which several persons are engaged, a transaction comprising the doing of separate acts, similar or diverse by several persons. In a case some of the assailants came in one truck and attacked the deceased and the other accused person came in another truck and attacked the companion of the deceased. The prior concert and planning by all the accused persons was clear from the evidence.

Supreme Court held that this fact would not make any difference as both the attacks were part of the same transaction. Therefore, Section 34 was held applicable. Cuning, J. has explained in K.

E. v. Barendra Kumar, that it is impossible to conceive two individuals doing identically the same act; such a thing is impossible.

Therefore, to have any meaning the expression “ criminal act done by several persons” must contemplate an act which can be divided into parts each part being executed by a different person, the whole making up the “ criminal act which was the common intention of all”. (ii) “ Done by several persons”: It is necessary that the act must have been done by several persons. Criminal act is done by one person, even if there is series of acts, Section 34 will not apply. More than one person should be involved in the criminal act. The offenders must be shown to be engaged in a criminal enterprise, that is to say, though they may not be engaged in doing the same act, each one of them must be a participant in some act connected with their common intention. In a case two persons being the partners of a business had taken a room on rent for their business purposes. One of them alone defrauded third party in that room.

Supreme Court held that the other partner having no knowledge of the fraud was not liable to be punished with the aid of Section 34, I. P. C. It is not necessary that a similar or the same act may be committed by different offenders.

The acts may be different, e. g., where out of several burglars some keep out a watch and one of those who enter the house shoots and kills an inmate or there may be similar acts as where several persons combine to assault another.

There must be evidence of some distinct act by the accused which may be regarded as a part of the criminal act. Actual participation is necessary though the participation may be passive. (iii) “ In furtherance of common intention”: What is the meaning of the expression “ in furtherance of the common intention”? The dictionary meaning of the word “ furtherance” is “ advancement or promotion”. If four persons have a common intention to kill A, they will have to do many acts in promotion of that intention in order to fulfil it. Some illustrations will clarify the point. Four persons intend to kill A, who is expected to be found in a house. All of them participate in different ways.

One of them attempts to enter the house but is stopped by the sentry and he shoots the sentry. Though the common intention was to kill A, the shooting of the sentry is in furtherance of the said common intention. Section 34 applies. In a case father and son were accused.

Along with co-accused they attacked deceased and his family members. Accused brought out deadly weapons from house by which accused and co-accused attacked deceased. One of the accused dealt only one blow on arm of deceased. The circumstances indicate the intention of causing death, Section 34 applies.

Take a third variation of the illustration. The intended victim has a twin brother who exactly resembles him and the accused who is entrusted with the part of shooting the intended victim, on a mistaken impression shoots the twin brother. The shooting of the twin brother is also in furtherance of the common intention. The common intention may be to do one act and

another act may be done in furtherance of the common intention. Such other act in furtherance may be a preliminary act necessary for achieving the common intention, or it may be done while achieving it or it may be done after achieving it. If such other act has no connection with the common intention, it shall not be in furtherance and consequently Section 34 shall not apply. Thus, while the common intention is to kill a person, a theft is also committed by one of the several persons participating in the criminal act, Section 34 shall not apply in respect of the theft which shall be the separate act of the individual concerned and none others of the remaining persons shall be liable for it.

Emphasising this third aspect the Supreme Court in a case observed that it is true that in order to convict persons vicariously under Section 34, I. P. C., 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. Common intention may develop on the spot. : In certain circumstances common intention may suddenly develop on the spot, which may be inferred by the conduct of the accused.

This opinion was expressed by the Supreme Court in the case of Krishna Gobind Patil v. State of Maharashtra. The similar opinion was also approved by the Supreme Court in Hari Om v. State of U. P. The Supreme Court, in Pratap Singh v. State of M.

P., held that the common intention in criminal jurisprudence is the premeditated meeting of minds. No doubt the common intention can also be formed on the spot.