

In be connected with  
the aid of



**ASSIGN  
BUSTER**

In offences involving physical violence, normally physical presence at the scene of offence is necessary to hold the offender liable, but such is not the case, where the offence consists of diverse acts which may be done at different times and places. The antithesis is between the preliminary stages, the agreement, the preparation, planning, which is covered by Section 109, and the stage of commission when the plans are put into effect and carried out: Section 34 is concerned with the latter.

It is true that there must be some sort of preliminary planning which may or may not be at the scene of the crime and which may have taken place long before hand, but, there must be added to it the element of physical presence at the scene of occurrence coupled with actual participation which of course can be of a passive character such as standing by a door, provided that is done with the intention of assisting in the furtherance of the common intention of them all and there is a readiness to play his part in the pre-arranged plan when the time comes for him to act. The emphasis in Section 34 is on the word “ done”. It is essential that the accused join in the actual doing of the act and not merely in planning its perpetration. If the accused was not present, he cannot be connected with the aid of Section 34, I.

P. C. The deceased was not residing in the haveli where he was murdered. It was per chance that he happened to be there. It cannot therefore be said that the appellant and his companion had any pre-arranged plan to kill the deceased. The mere fact that the appellant and his companion came together armed with rifles is not sufficient to indicate that they had come sharing a common intention to commit the murder. It may be that he had such common intention but it is difficult to fill the gap between “ may” and “

must” and to say that the appellant must have shared the common intention for causing the death of the deceased. The essence of liability under Section 34 is to be found in the existence of a common intention animating the offenders leading to the doing of a criminal act in furtherance of the common intention and presence of the offender sought to be rendered liable under Section 34 is not one of the conditions of its applicability.

To establish joint responsibility for an offence it must of course be established that a criminal act was done by several persons; the participation and doing the act and not merely in its planning. A common intention —a meeting of minds to commit an offence and participation in the commission of the offence in furtherance of that common intention invites the application of Section 34. The common intention may be to do a certain act regardless of the end and the means.

It may be to achieve a certain end regardless of the means or it may be to do an act within certain means regardless of the end. It need not be the very criminal act actually done or to cause the particular result which came about in committing the crime. It is clear that common intention implies concert and planned action. A common intention may develop on the spot and in the course of events though it might not have been present to start with. And the intention can be inferred from the conduct of the assailants where a person commits an assault upon another and a third person joins in committing the assault, it is a fair inference that the two were acting in concert.

Similarly, common intention to murder is manifest from the fact that accused were armed, came together, participated equally in abusing and in actual assault and went together. Meaning and applicability of the term common intention and its distinction from the similar intention has been discussed by our Supreme Court in Hanuman Prasad, and others v. State of Rajasthan, (2009) 1 S. C. C. (Cri.) 564.

Common intention, under Section 34, does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. Several persons can simultaneously attack a man and each can have the same intention, namely, the same intention to kill, and each can inflict individually a separate fatal blow and yet none would have the common intention unless there was a prior meeting of minds and there was “unity of criminal behaviour resulting in the criminal act”.

The prior concert or meeting of minds may be determined from the conduct of the offenders unfolding itself during the course of action and the declarations made by them just before mounting the attack. There is difference between the “same intention” and “similar intention”. It is not to have the “same intention” independently of each other for fastening vicarious liability for the act of another under Section 34, I. P. C. Therefore, where there is no evidence as to what the accused said or did before or during the commission of the offence the accused could not be held to have “common intention”.

Proof: The Supreme Court has emphasised that in order to attract Section 34 it is not sufficient to prove that each of the participating culprits had the same intention to commit a certain act, what is the requisite ingredient of Section 34 is that each must share the intention of the other. The prosecution must establish "common intention" and prove that the criminal act was done in concert pursuant to a pre-arranged plan keeping in mind the distinction between "common intention" and "same intention" or "similar intention", though the dividing line between them is often very thin. Common intention should never be inferred unless it necessarily follows from the circumstances of the case. The mere fact that suddenly both the accused persons procured their weapons from somewhere would not necessarily lead to the conclusion that both the accused persons had entered into pre-arranged plan to murder the accused. The common intention pre-supposes a prior concept, a pre-arranged plan, i. e.

, a prior meeting or minds; this does not mean that there must be a long interval of time between the formation of the common intention and the doing of the act. It is not necessary to adduce direct evidence of the common intention. Indeed in many cases it may be inferred from the surrounding circumstances and the conduct of the parties. In a case the two accused persons had common grudge against the deceased. The time of attack was dead of night and the two accused came with lathi and phrasa and made a determined concerted attack causing not less than 14-15 injuries. Supreme Court held that these circumstances unerringly lead to the conclusion that both had a common intention to cause the death and in pursuance of such intention both belaboured the deceased to death at the

spot. In *Pardeep Kumar v. Union Administration, Chandigarh*, the Supreme Court held that 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.

Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. Again Supreme Court in *Parasjit Singh v. State of Punjab* held that each and every accused need not be shown to have committed the overt act. It is enough to show that one or more of the accused persons acted in furtherance of the common intention. Common intention can develop at the spur of the moment. It may be found in either a pre-arranged plan or in an instantaneous prior meeting of minds. Where it is proved that in the course of the occurrence, whatever the speed of events, prior to the commission of the criminal act the minds of the culprits had met, it would be open to the court to conclude that common intention to commit the crime had been conceived. It has to be inferred not merely by the consequences of the acts but also by a reference to the motive which actuated the offenders, the weapons with which they were armed, the manner of their attack, the individual acts and the attitude of the others with regard to the individual acts.

It is no doubt difficult if not impossible, to procure direct evidence to prove the intention of an individual. It has to be inferred from his act or conduct or other relevant circumstances of the case. The inference of common intention should never be reached unless it is necessarily deducible from the

circumstances of the case. The totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence with which they would be convicted. The pre-arranged plan may develop on the spot during the course of the commission of the offence but the crucial circumstance is that the said plan must precede the act constituting the offence. Therefore, before a court can convict a person for an offence read with Section 34, I. P. C.

it should come to a definite conclusion that the said person had a prior concert with one or more persons named or unnamed for committing the offence. In *Surinder Singh and another v. State of Punjab*, the Court held that when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. Further, for applying Section 34 it is not necessary to show some overt act on the part of the accused.