

For where the charge
specifically named
certain



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For the application of Section 34 there must be evidence involving several persons either specifically named or some named and others unnamed in the charge. In *Baital Singh v. State of U. P.*, the Supreme Court has held that the name of other persons sharing the common intention need not necessarily be proved. Where the charge specifically named certain individuals, of whom all are acquitted except one, his liability is established 'individually' and not 'conjointly'. Thus, where the two named accused were convicted under Section 302 read with Section 34 by the Session Judge but in appeal one of them was given benefit of doubt by the High Court and was acquitted, it was held that the conviction of the remaining accused could not be sustained with the aid of Section 34. In the instant case, the Supreme Court observed thus: '....

. the appellant's conviction for the two substantive offences read with Section 34 cannot be sustained because this is a case where the co-accused is a named person and he has been acquitted and by reason of it the appellant cannot be held to have acted conjointly with anyone in the commission of the offence. In a case the Supreme Court has observed that where two group of persons were in conflict, consequently one attacks to another, as a result one person is dead, all the persons will not be responsible for death but their responsibility will be judged on the basis of individual acts. This position of law is well settled by the Supreme Court.

We may only refer to a few decisions in this behalf, viz., *Prabhu Babaji v. State of Bombay*, *Krishna Govind Patil v. State of Maharashtra*, and *Baul v. State of U. P.*

Where, however, the charge mentions that the particular act was committed by some unnamed individuals, all are acquitted except one, but evidence is led against the named persons as well as the unknown persons, the joint liability with the unknown persons can still be established by involving Section 34. The acquittal of some of the accused does not mean that the story of more than one person having attacked the victim is false if the participating presence of a plurality of assailants is proved. It only means that the identity of the absolved accused is not firmly fixed.

Therefore, it follows that such of them, even if the number dwindled to one, as are true to have participated in the assault deserve to be convicted for the principal offence read with the constructive provision.