2026:AHC:167462-DB

A.F.R.

RESERVED ON 16.04.2026
DELIVERED ON 11.08.2026

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 211 of 1992

Harish Chandra

…..Appellant(s)

Versus

State

…..Respondent(s)

Counsel for Appellant(s) : Alok Ranjan Tripathi, D. Swaroop
Counsel for Respondent(s) : D.G.A.

Court No. - 45

HON'BLE SALIL KUMAR RAI, J.
HON'BLE VINAI KUMAR DWIVEDI, J.

(Delivered by Hon'ble Salil Kumar Rai, J.)

Heard Sri Shiv Nath Singh, assisted by Sri Alok Ranjan Tripathi for the appellant and Sri Gaurav Pratap Singh for the State.

The present appeal has been filed against the judgment and order dated 25.1.1992 passed by the District and Sessions Judge, Kanpur Dehat in Sessions Trial No. 108 of 1988, State v. Harish Chandra, arising out of Case Crime No. 113 of 1987, under Sections 307/323 IPC, Police Station Bhognipur, District Kanpur Dehat, whereby the appellant has been convicted under Sections 302 and 323 IPC read with Section 34

IPC and sentenced to life imprisonment under Section 302 IPC and six months' rigorous imprisonment under Section 323 IPC.

The prosecution case, as disclosed in the first information report, is that at about 9:00 p.m. on 24.5.1987, Tara Chand invited Chhuttan, the deceased, Gaya Prasad, the first informant, and Chhote, son of Babu Lal, to sleep in his muskmelon field. When they reached the field, they found Sheo Ram, Puttan and Harish Chandra, the appellant, already present there. Tara Chand, Puttan and the appellant are sons of Sheo Ram, while Gaya Prasad is the brother of Chhuttan. On their arrival, Puttan exhorted that the three persons be beaten alleging that they had stolen his slippers. Sheo Ram then fired at Chhuttan with his D.B.B.L. gun, while Gaya Prasad and Chhote were assaulted with lathis.On hearing their shouts, some villagers, including Panchu, son of Ram Aadhar, came to the spot carrying a torch, whereupon the assailants fled. Chhuttan, who had sustained the firearm injury, was taken to the village. As no transport was available at that time, the first informant took him to the police station the following morning.

A first information report was accordingly lodged on 25.5.1987 at 9:55 a.m., registering Case Crime No. 113 of 1987 under Sections 307/323 IPC against Sheo Ram, Tara Chand, Puttan and the appellant. The written report was marked as Exhibit Ka-1 and the chick FIR was marked as Exhibit Ka-14.

Chhuttan was medically examined by Dr. Chandra Prakash at 3:15 p.m. on 25.5.1987. The injury report, marked as Exhibit Ka-18, recorded multiple abrasions on his chest, abdomen, elbow, hand and hip, besides an entry wound on the lower abdomen through which intestine was protruding. The injuries were advised to be examined by X-ray where indicated.

On the same day, the Investigating Officer recorded the statement of Chhuttan under Section 161 Cr.P.C. In that statement, Chhuttan stated that Tara Chand had invited him, Gaya Prasad and Chhote to the field where Puttan, Sheo Ram and the appellant were already present. He stated that on their arrival Puttan exhorted the others to kill Chhuttan

alleging that he had stolen the slippers. According to Chhuttan, Sheo Ram fired at him, while Puttan, who was armed with a lathi, and Harish Chandra, who was armed with a stick, assaulted Gaya Prasad and Chhote. He further stated that when the villagers arrived on hearing the shouts, the assailants ran away towards their house. Chhuttan also stated that he and the villagers as well as his brother had recognised the assailants. He explained that although he had sustained the firearm injury at about 9:00 p.m., he could not be taken to the police station during the night because no transport was available and that he was accordingly taken there the following morning. Chhuttan further stated that Sheo Ram and the others had assaulted them because the Gram Pradhan had permitted the Harijans of the village to divide amongst themselves Gaon Sabha land which Sheo Ram had illegally occupied and over which Sheo Ram wanted to secure his possession. The statement recorded under Section 161 Cr.P.C. was proved by the Investigating Officer as PW-4 and was treated by the trial court as a dying declaration and marked as Exhibit Ka-17.

Chhuttan died on 27.5.1987. Section 302 IPC was thereafter added during investigation. An inquest was conducted and the dead body was sent for post-mortem examination by Dr. Santosh Kumar. The post-mortem report, marked as Exhibit Ka-2, recorded a surgical stitched wound on the right side of the abdomen, drainage wounds near the umbilicus and multiple lacerated wounds.

Chhote was also medically examined by Dr. Ashok Kumar. His injury report, marked as Exhibit C-Ka-1, recorded a single contusion on the outer aspect of the right ankle joint. The injury was opined to be simple in nature and caused by a hard object.

The gun was recovered from the possession of Sheo Ram by the Investigating Officer on 28.5.1987 and the recovery memo was marked as Exhibit Ka-12. The Investigating Officer also collected blood-stained and plain soil from the place of occurrence on 26.5.1987. The recovery memo was marked as Exhibit Ka-11. The forensic report, marked as Exhibit Ka-16, recorded that blood was found on the soil, but the blood

clots had disintegrated and no opinion regarding the nature of the blood could be given.

The trial court record shows that the appellant was absconding and, consequently, the initial charge-sheet was filed only against Sheo Ram, Tara Chand and Puttan under Sections 302/34 and 323/34 IPC. Sessions Trial No. 179 of 1987 was thereafter registered against them. Sheo Ram was charged under Section 302 IPC simpliciter, while Puttan and Tara Chand were charged under Section 302 read with Section 34 IPC and Section 323 read with Section 34 IPC.

By judgment and order dated 28.5.1988, the trial court convicted Sheo Ram under Section 302 IPC and sentenced him to life imprisonment. Puttan and Tara Chand were convicted under Section 302 read with Section 34 IPC and were also sentenced to life imprisonment. Puttan and Tara Chand were, however, acquitted of the charge under Section 323 read with Section 34 IPC on the ground that the injuries allegedly sustained by Gaya Prasad and Chhote had not been proved. Sheo Ram, Puttan and Tara Chand challenged the said judgment in Criminal Appeal Nos. 1528 of 1988 and 1420 of 1988. Both appeals were admitted and the appellants were granted bail. During their pendency, Sheo Ram died and the appeals survived only in relation to Puttan and Tara Chand. Criminal Appeal No. 1528 of 1988 was subsequently dismissed as not maintainable by order dated 20.11.2025, while Criminal Appeal No. 1420 of 1988 was heard on merits and allowed on the same date. The convictions of Puttan and Tara Chand under Section 302 read with Section 34 IPC were set aside and they were acquitted of the charges.

Meanwhile, the appellant was arrested and a charge-sheet was filed against him under Sections 302 and 323 IPC. The matter was committed to the Sessions Court and Sessions Trial No. 108 of 1988 was registered. The appellant was charged under Section 302 read with Section 34 IPC for the death of Chhuttan and under Section 323 IPC for causing injuries to Gaya Prasad and Chhote. He pleaded not guilty and claimed trial.

In order to prove its case, the prosecution examined four witnesses. Gaya Prasad, the first informant, was examined as PW-1; Chhote, the other alleged injured witness, as PW-2; Dr. Santosh Kumar, who had conducted the post-mortem examination, as PW-3; and the Investigating Officer as PW-4.

The trial court also summoned five witnesses for proving the documentary evidence. Dr. Chandra Prakash, who had examined Chhuttan, was examined as CW-1. Dr. Ashok Kumar, who had examined Chhote, was examined as CW-2. Dr. Prabha Pandey, who had examined the appellant on 17.4.1990 and assessed his age as 19 years, was examined as CW-3. Ram Chandra, a Sub-Inspector, was examined as CW-4, to prove certain formal documents relating to the post-mortem and inquest. CW-5 was an Orderly and was also examined as a formal witness. The evidence of CW-3 to CW-5 does not require detailed consideration for deciding the present appeal.

PW-1, Gaya Prasad, substantially reiterated the prosecution version. He stated that Puttan was armed with a lathi and the appellant was carrying a stick and that both of them assaulted him and Chhote. He also claimed that his injuries had been examined in hospital and that the injury report had been handed over to the police. However, the injury report of PW-1 was not found on the trial court record. The witness denied the suggestion that he was falsely implicating the accused on account of enmity.

PW-2, Chhote, initially supported the prosecution case. He stated that the appellant and Puttan were armed with lathis and that Tara Chand, Puttan and the appellant assaulted him and Gaya Prasad. He also supported the prosecution case regarding the motive attributed to Sheo Ram. PW-2 withstood the cross-examination conducted on the same day and reiterated his testimony. In a further cross-examination conducted on another date, however, he resiled from his earlier statement and stated that although he had seen Sheo Ram, Puttan and Tara Chand in the agricultural field, he had not seen the appellant there. He further stated that on the earlier date the police had beaten him, attempted to

strangulate him and threatened him to depose as directed. The witness was declared hostile and the prosecution was permitted to cross-examine him. During such cross-examination, he admitted that he had come to court accompanied by the appellant and the other accused.

PW-3, Dr. Santosh Kumar, proved the post-mortem report. In his cross-examination, he stated that the injuries found on the body of Chhuttan could not have been caused by a lathi or a stick. PW-4, the Investigating Officer, proved the statement of Chhuttan recorded under Section 161 Cr.P.C. and deposed regarding Chhuttan’s capacity to make the statement. CW-1 stated that all the injuries found on the body of Chhuttan were firearm injuries. CW-2 proved the injury report of Chhote and stated that the injury was simple in nature.

In his examination under Section 313 Cr.P.C., the appellant denied the incriminating circumstances put to him and alleged false implication.

The trial court held the testimony of PW-1 to be wholly reliable and sufficient to establish the prosecution case. It disbelieved the statement of PW-2 in his subsequent cross-examination in which he denied having seen the appellant at the place of occurrence, principally because the witness had admitted having come to court accompanied by the accused. The trial court further held that the medical evidence established that Chhote had been injured in the same occurrence in which Chhuttan sustained firearm injuries. It rejected the defence contention that the statement of Chhuttan recorded by the Investigating Officer could not be treated as a dying declaration merely because it had not been recorded by a Magistrate or because no medical certificate had been obtained regarding his fitness to make the statement. The trial court observed that there was nothing in the evidence to suggest that Chhuttan was unconscious or otherwise incapable of making a statement when it was recorded. The trial court also relied upon the evidence of PW-1 and PW-2 to hold that the appellant was armed with a stick and had participated in the assault. It rejected the appellant's plea that he was a juvenile on the date of occurrence. On the basis of the aforesaid evidence, the trial court concluded that Chhuttan had died from firearm

injuries caused by Sheo Ram and that the appellant, who was present and armed when the deceased and the injured reached the place of occurrence, shared the common intention of the other accused. The appellant was accordingly convicted under Sections 302 and 323 IPC with the aid of Section 34 IPC.

The counsel for the appellant submitted that even if the prosecution evidence were accepted in its entirety, there was no evidence connecting the appellant with the murder of Chhuttan. The appellant, according to the prosecution itself, was armed only with a stick and there was no injury on the body of the deceased which could have been caused by a stick or lathi. It was argued that the mere presence of the appellant at the place of occurrence, even if accepted, could not establish either common intention or participation in the murder. It was further submitted that the conviction under Section 323 IPC was also unsustainable. The injuries allegedly suffered by Gaya Prasad had not been proved, while the only proved injury on Chhote was, according to the medical evidence, attributable to a lathi, whereas the prosecution alleged that the appellant was armed with a stick. The counsel submitted that even the statement of Chhuttan treated as a dying declaration attributed only a stick to the appellant.

The A.G.A. supported the judgment of the trial court and submitted that the evidence established the presence and participation of the appellant and justified the inference of common intention. It was accordingly submitted that the appeal deserved to be dismissed.

We have considered the submissions of the counsel for the parties and carefully perused the trial court record.

Even if the prosecution evidence is accepted in its entirety, the case against the appellant stands on a narrow factual foundation. According to the prosecution itself, when Chhuttan, Gaya Prasad and Chhote reached the place of occurrence, the appellant was already present there and was armed only with a stick. The first information report merely alleges his presence at the scene and does not specify the weapon carried by him. The assertion that the appellant was armed with

a stick and Puttan with a lathi first appears in the statement of Chhuttan recorded under Section 161 Cr.P.C., which the trial court has treated as the dying declaration. PW-1 also deposed that the appellant was armed with a stick.

The prosecution case further is that while Sheo Ram fired at Chhuttan, the appellant and Puttan assaulted Gaya Prasad and Chhote. PW-1 stated that the assault with sticks and lathis continued for about ten to fifteen minutes and that nearly twenty blows were inflicted. However, although PW-1 claimed to have sustained injuries, the prosecution failed to prove the same. His injury report was admittedly not available on the record and, therefore, there is no reliable evidence that he suffered any injury in the occurrence.

So far as Chhote is concerned, the medical evidence proves only a single contusion on his ankle. According to CW-2, the injury was caused by a lathi. There is no medical evidence to indicate that any injury on his person was caused by a stick.

The medical evidence relating to the deceased is equally significant. PW-3 categorically stated that none of the injuries found on the body of Chhuttan could have been caused by a lathi or a stick. CW-1 also deposed that all the injuries sustained by the deceased were firearm injuries. Thus, the medical evidence completely rules out any assault upon the deceased either by a lathi or by a stick.

The prosecution case, therefore, when read as a whole, is that Sheo Ram alone caused the firearm injuries to Chhuttan, whereas the appellant and Puttan allegedly assaulted Gaya Prasad and Chhote. There is no allegation that the appellant assaulted the deceased or attempted to do so. Equally, there is no evidence that any injury caused by a stick was found either on the body of the deceased or on the body of Chhote. The injuries of Gaya Prasad, as noticed earlier, have not been proved.

It is in the aforesaid factual background that the question arises whether the appellant could have been convicted under Section 302 and Section 323 read with Section 34 IPC.

Common intention is ordinarily a matter of inference to be drawn from the conduct of the accused and the surrounding circumstances. The inference, however, must arise from the circumstances proved and cannot be founded merely on association, presence or suspicion. In ***Mahbub Shah v. King Emperor AIR (1945) PC 118***, the Privy Council cautioned that an inference of common intention within the meaning of Section 34 should not be reached unless it is a necessary inference from the circumstances of the case.

The distinction between common intention and a similar or independently entertained intention as noticed in ***Mahbub Shah (supra)*** is of significance in this context. Persons may participate in the same occurrence and may even act with similar intentions, without necessarily sharing a common intention in relation to the particular offence committed. The acts attributed to the respective accused and their relationship with the offence have, therefore, to be examined before constructive liability under Section 34 can be imposed.

The Supreme Court has consistently reiterated the same principle. In ***Jasdeep Singh alias Jassu v. State of Punjab (2022) 2 SCC 545***, Paragraph - 20), while summarising the law relating to Section 34 IPC, it observed that the prosecution must establish common intention by clear, cogent and definite evidence and that the inference must arise from the proved conduct of the accused and the attendant circumstances. The burden continues to remain upon the prosecution throughout.

The prosecution must establish not merely the existence of a common intention but also participation by the accused in furtherance of that common intention. The evidence must disclose that the act attributed to the accused was in aid of or in furtherance of the commission of the offence for which he is sought to be held constructively liable. In ***Amrik Singh v. State of Punjab, (1972) 4 SCC (N) 42 : 1972 Cri LJ 465***, while referring to Russell on Crime, the Supreme Court explained that participation in criminal action to bring about a particular result requires some kind of aid or assistance producing the intended effect and that an act may be regarded as having been done in furtherance of the ultimate

felony where it is a step intentionally taken for effecting that felony. The significance of the principle is that participation in an occurrence does not, by itself, amount to participation in every offence committed during that occurrence. An accused may commit or participate in an act constituting one offence, but that fact alone cannot make him constructively liable for another offence unless the act attributed to him was in aid of, or in furtherance of, that particular offence. There must be a functional relationship between the act attributed to the accused and the offence for which liability under Section 34 is sought to be imposed. The prosecution must establish the common intention in relation to the offence for which the accused is convicted. It is not enough to establish that the accused shared some common purpose or participated in some other criminal act during the same transaction. The act attributed to him must have some bearing upon, and must assist or facilitate, the commission of the offence charged.

Applying this principle to the present case, the prosecution has not established any such functional relationship between the acts attributed to the appellant and the murder of Chhuttan.

It is not the prosecution case that the appellant assaulted Chhuttan. Nor is there any allegation that he exhorted Sheo Ram to fire at Chhuttan or otherwise assisted him in causing the firearm injury. The act attributed to the appellant is that he assaulted Gaya Prasad and Chhote with a stick. Even assuming that such assault is proved, the prosecution has not shown how that act aided, facilitated or advanced the murder of Chhuttan.

The distinction is important. The appellant is sought to be convicted for the murder of Chhuttan. It is, therefore, not enough to establish that he committed some criminal act during the occurrence. His participation must be referable to the offence of murder. The prosecution has not shown that the assault allegedly committed by him upon Gaya Prasad and Chhote had any functional relationship with the killing of Chhuttan.

The evidence regarding the manner in which the occurrence unfolded assumes significance in this regard. PW-1 stated that the assault upon him and Chhote continued for about ten to fifteen minutes and that numerous blows were inflicted. Chhuttan, however, did not die immediately after receiving the firearm injury. He remained alive, was taken to the village and was subsequently taken to the police station, where his statement was recorded on the following day. During the period of ten to fifteen minutes in which, according to PW-1, the assault upon him and Chhote continued, there is no allegation that the appellant made any attempt to assault Chhuttan or otherwise cause further injury to him.

This circumstance is not merely an omission in the prosecution evidence. It bears directly upon the question whether the appellant shared the intention to cause the death of Chhuttan. If the appellant had shared with Sheo Ram a common intention to cause the death of Chhuttan, the prosecution would have to explain why, despite the deceased remaining alive after the firearm injury and despite the alleged assault continuing for ten to fifteen minutes, the appellant made no attempt to assault the deceased. It is also not the prosecution case that the appellant prevented Gaya Prasad or Chhote from going to the assistance of Chhuttan or otherwise facilitated the completion of the murder.

The conduct attributed to the appellant during this period, therefore, does not advance the prosecution case of participation in the murder. On the contrary, it weakens the inference sought to be drawn from his mere presence at the place of occurrence.

The circumstance of the appellant's presence before the arrival of the deceased and the injured persons also does not, by itself, establish a prior meeting of minds. The prosecution case is that the three persons reached the field pursuant to an invitation extended by Tara Chand. The fact that the appellant was already present there may establish his presence, but presence is not equivalent to participation in the murder.

The prosecution has also relied upon motive. Here again, the evidence requires careful examination. According to the prosecution version of the occurrence, Puttan exhorted with the allegation that the three persons had stolen his slippers. The exhortation was not addressed to any particular accused to commit any particular act. It is, therefore, evidence of the immediate cause of the quarrel, but by itself it does not establish that the appellant shared a pre-arranged intention with Sheo Ram to cause the death of Chhuttan.

The other motive relied upon by the prosecution relates to the dispute concerning Gaon Sabha land. This motive emerges from the statement of Chhuttan and is principally attributed to Sheo Ram, who was alleged to have illegally occupied the land and to have desired to secure his possession over it. There is no independent evidence showing that the appellant shared this motive or that he had joined Sheo Ram in a prior plan to kill Chhuttan on account of the land dispute.

The two circumstances, therefore, cannot simply be treated as evidence of a common intention shared by the appellant. The immediate cause of the occurrence, according to the prosecution evidence, was the allegation regarding the stolen slippers, while the land dispute is put forward as the underlying reason for Sheo Ram's alleged desire to eliminate Chhuttan and Gaya Prasad. Neither circumstance, without more, establishes that the appellant had prior knowledge of, or had joined, a plan to commit the murder.

Relationship between the appellant and Sheo Ram also does not take the prosecution case any further. The fact that they were father and son may explain their presence together or their association, but relationship cannot substitute proof of a prior meeting of minds or participation in the particular offence charged.

Thus, the circumstances relied upon by the prosecution—presence of the appellant at the place of occurrence, his relationship with Sheo Ram, and the motives suggested in the prosecution evidence—do not, individually or cumulatively, establish that the appellant shared the common intention to murder Chhuttan.

The distinction between common intention and similar intention assumes importance here. The prosecution evidence may suggest that the appellant was present in a situation in which another accused caused the fatal injury and that the appellant himself may have participated in an assault upon other persons. But that does not, without the necessary connecting circumstance, establish that the appellant shared the intention to commit the particular offence of murder.

The prosecution has also failed to establish the appellant's participation in the offence under Section 323 IPC. The alleged injuries of Gaya Prasad have not been proved. The only injury proved on Chhote was a contusion which, according to CW-2, could have been caused by a lathi. The prosecution evidence, including the statement of Chhuttan treated as a dying declaration, describes the appellant as carrying a stick. There is consequently no reliable evidence connecting the appellant with the injury proved on Chhote.

It follows that even if the evidence of PW-1 regarding the presence and conduct of the appellant is accepted in its entirety, it does not establish the ingredients necessary to invoke Section 34 IPC either for the offence of murder or for the offence under Section 323 IPC.

The trial court proceeded principally on the basis that the appellant was present at the place of occurrence, was armed, and was present before the deceased and the injured reached the field. From these circumstances it inferred that the appellant shared the common intention of the other accused. In our considered opinion, the inference does not follow from the evidence on record. Presence, relationship and participation in an assault upon other persons may be relevant circumstances, but they cannot dispense with the requirement of establishing participation in furtherance of the common intention relating to the particular offence charged.

The trial court has, therefore, erred both in law and on the appreciation of the evidence in holding that the appellant's presence at the place of occurrence, armed with a stick, was sufficient to establish common intention and constructive liability under Section 34 IPC.

We are also conscious of the fact that the co-accused Tara Chand and Puttan, who had earlier been convicted under Section 302 read with Section 34 IPC, have since been acquitted by this Court by judgment and order dated 20.11.2025 passed in Criminal Appeal No. 1420 of 1988. The present appeal has to be decided on the evidence against the appellant, but the subsequent acquittal of the co-accused is also a circumstance which cannot be entirely ignored while considering the prosecution theory of common intention.

For all the aforesaid reasons, we are of the view that the prosecution has failed to establish beyond reasonable doubt that the appellant shared a common intention with Sheo Ram to cause the death of Chhuttan or that any act attributed to the appellant was in aid of or in furtherance of the murder. The prosecution has also failed to establish his participation in the offence under Section 323 IPC.

The appeal is, accordingly, ***allowed***.

The judgment and order dated 25.1.1992 passed by the District and Sessions Judge, Kanpur Dehat in Sessions Trial No. 108 of 1988 is set aside.

The appellant is acquitted of the charges under Section 302 read with Section 34 IPC and Section 323 read with Section 34 IPC.

The appellant is on bail. He is not required to surrender. His bail bonds are cancelled and the sureties stand discharged.

Let the trial court record be remitted forthwith. A certified copy of this judgment shall be transmitted to the trial court for information and compliance.

(Vinai Kumar Dwivedi,J.) (Salil Kumar Rai,J.)

August 11, 2026
Satyam

Digitally signed by :-
SATYAM AGRAHARI
High Court of Judicature at Allahabad