



HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL APPEAL No. - 255 of 1983

A.F.R.

Reserved on 16.02.2026

Delivered on 16.03.2026

Gopi Singh and others

.....Appellant(s)

Versus

State of U.P.

.....Respondent(s)

Counsel for Appellant(s)	:	B.B.Paul, Shiv Sharan Tripathi, Sumit Pandey
Counsel for Respondent(s)	:	Govt. Advocate

Court No. - 84

HON'BLE SANJIV KUMAR, J.

1. This Criminal Appeal, under Section 374(2) Code of Criminal Procedure, 1973 (in short Cr.P.C.), has been filed by the accused/appellants, to wit, Gopi Singh, Ganga Sahay, Kishan Prasad and Mihi Lal, against common judgment and order dated 01.02.1983 passed by Shri S.K. Agnihotri, IVth Additional Sessions Judge, Aligarh, in Sessions Trial No. 499 of 1981 State of U.P. Vs. Gopi Singh and 2 Others and Sessions Trial No. 83 of 1982 State of U.P. Vs. Mihi Lal, arising out of same Case Crime No.499 of 1982, Police Station- Barla, District- Aligarh.

2. By the impugned judgment and order appellant- Mihi Lal was sentenced to undergo three years' rigorous imprisonment for offence punishable under Section 307 I.P.C.; Appellants Gopi Singh, Ganga Sahay and Kishan Prasad were sentenced to undergo rigorous imprisonment of three years for offence punishable under Section 307 IPC read with 34 IPC and they were further sentenced to undergo

rigorous imprisonment for six months for offence punishable under Section 323 IPC; appellant Mihi Lal was also sentenced to undergo imprisonment of two years' for offence punishable under Section 25 Arms Act and rigorous imprisonment for a period of six months for offence punishable under Section 323 read with 34 IPC; all the accused were acquitted for the offence punishable under Section 332 IPC as well as Section- 332 read with 34 IPC. It was further directed that all the sentences shall run concurrently.

3. Brief facts of the prosecution case are that the first informant Sub Inspector Jai Prakash of Police Station- Barla, District- Aligarh lodged an FIR on 26.12.1980 at 05:30 p.m. at Police Station- Barla, District- Aligarh stating therein that today i.e. 26.12.1980 at about 03:10 p.m., S.I. Jai Prakash along with Constables Tej Singh and Yad Ram Singh reached village- Mudhail to conduct an inquiry with regard to an application given by Tej Singh s/o Man Singh r/o Village Mudhail. He reached at the door of Tej Singh and summoned both the parties and asked them to get the matter settled between them or approach the court for redressal of their grievance. Thereupon, appellants Gopi Singh, S/o Bhudev Singh; Ganga Sahay son of Bhudev, Kishan Prasad son of Ganga Sahay, Mihi Lal (nephew of Gopi Singh) son of Chhokhe Lal, got agitated and started saying that the police has no concern with their matter. The villagers, however, said that the police is giving them correct advise and they should settle their dispute amicably, thereupon the appellants got up on their pedestal (*chabuttra*) and at once started throwing stones and bricks over the police party to cause them harm. Meanwhile, Mihi Lal son of Chhokhe Lal, whipped out his country-made pistol from his pocket and fired at the police party to which they escaped unhurt. Constables Tej Singh and Yad Ram Singh sustained injuries from bricks and stones thrown upon them. With the help of Karan Singh, Dev Karan Singh, Pokhpal, Tirkha residents of Mudhail, the police party captured appellant- Mihi Lal at the spot at 03:30 p.m. He was carrying a country-made pistol, 12 bore and a live cartridge 12 bore. There was an empty cartridge found in the barrel of the pistol. The pistol

and cartridges were sealed at the spot and its *fard baramadagi* was prepared. Thereafter, appellant Mihi Lal was taken to the police station and on the basis of *fard baramadagi* an FIR under Case Crime No.278 of 1980, under Sections- 332, 336, 307 and 353 IPC and Case Crime No.279 of 1980 under Section- 25 Arms Act was registered against the appellants.

4. The investigation was entrusted to S.I. B.L. Gautam, who carried out the investigation. He recorded statements of the first informant and other witnesses. Injured Constables Tej Singh and Yad Ram Singh were medically examined. The Investigating Officer inspected the place of occurrence and prepared its site plan (Ext. Ka-6). After collecting evidence the I.O. has filed charge-sheet against appellants- Gopi Singh, Ganga Sahay and Kishan Prasad, under Sections- 332, 336 and 307 IPC Ext. Ka-7; and against Mihi Lal under Sections- 332, 336 307 IPC, (Ext-Ka-8) and under Section- 25 Arms Act (Ext. Ka-9) before the competent court i.e. Judicial Magistrate Aligarh. The concerned court took cognizance of the offence and summoned the accused, they appeared before the learned court and copies of relevant prosecution papers were furnished to them under Section 207 Cr.P.C. and thereafter, the cases were committed to the Court of Sessions for trial.

5. The appellants appeared before the Court of Sessions, where charge under Sections- 307, 332 read with 34 IPC and 25 Arms Act was framed against the appellant Mihi Lal and charge under Section- 307 read with 34 IPC, 332 read with 34 IPC was framed against the appellants- Gopi Singh, Ganga Sahay and Kishan Prasad. All the accused pleaded not guilty and claimed to be trite. Both the Sessions trials had arisen from the same case crime number so *vide* order dated 22.09.1982 of the sessions Judge, both these cases were connected and S.T. number 499 of 1981 was treated as leading case.

6. The prosecution has examined six witnesses of fact to prove its case, to wit, P.W. 1 Deo Karan; P.W.2 S.I. Yad Ram Singh (informant); P.W.3 Head Constable Ram Das Yadav; P.W.4 S.I. Jai Prakash; P.W.5 Dr.

B.S. Dhariwal; P.W.6 S.O. Banwarilal (Investigating Officer), to prove its case.

7. P.W. 1 Deo Karan, is the eye-witness of the alleged incident and he has stated that on the date of incident at about 03:00 p.m. S.I. Jai Prakash along with two constables of Police Station- Barla, had reached the village to enquire about a dispute between Tej Singh and Gopi, where Pokhpal, Karan and others also reached there. After making inquiry the Inspector asked both the parties to settle the dispute mutually, thereupon, appellants Gopi Singh, Ganga Sahay, Kishan Lal and Mihi Lal objected and stated that the Police has no concern with their dispute and appellants Gopi Singh, Kishan Lal, and Ganga Sahay started throwing bricks and stones over police personnel and Mihi Lal whipped out his country-made pistol from his pocket and fired at S.I. Jai Prakash to which he escaped unhurt. The constables sustained injuries from bricks and stones. They tried to apprehend the appellants but only Mihi Lal could be captured and rest of the appellants succeeded in fleeing away from the spot. The country-made pistol and cartridges were recovered from Mihi Lal. *Fard barmadagi* was prepared at the spot, which the witnesses has proved as Ext. Ka-1.

8. In cross-examination P.W. 1 has said that Ganga Sahay and Gopi Singh are real brothers. Kishan Prasad is the son of Ganga Sahay. About five years ago, a proceeding under Section 107 Cr.P.C. was initiated between him, Pokhpal and others and cross-case was also lodged against Ganga Sahay and Kishori and others. The appellants Ganga Sahay, Gopi Singh and Kishan Prasad fled towards western side of the village. The Police did not fire at Mihi Lal in retaliation, and one person of the village namely Likharam was also injured.

9. P.W.2 Constable Yad Ram Singh, is one of the member of the Police party, who reached at village- Mudhail where the alleged incident took place. He has supported the prosecution case and stated that he had accompanied S.I. Jai Prakash and Constable Tej Singh to village where after inquiry the inspector asked both the parties to get their dispute

settled by compromise, whereupon appellants got agitated and started throwing bricks and stones over Policemen and appellant Mihi Lal fired at Police party from country-made pistol with an intention to kill, to which they escaped unhurt. The witness has said that he and constable Tej Singh sustained injuries from bricks thrown over them. Appellant Mihi Lal was captured at the spot and rest of the appellants fled away.

10. In cross-examination, P.W. 2 has said that village Pradhan was called but he did not come. At the time of incident, he did not know the names of the appellants. No test identification (TIP) of accused was conducted. At the time of firing Mihi Lal was at the roof of his house and the inspector was on the ground.

11. P.W.3 Head Constable Ram Das Yadav, is a formal witness who has scribed the FIR and has entered its gist in G.D. No.19 dated 26.12.1980. He has proved chik FIR Ext. Ka-2 and copy of G.D. as Ext. Ka-3.

12. P.W.4, S.I. Jai Prakash is the first informant of this case, he has also supported the prosecution case and has stated that he had reached at village- Mudhail alongwith other police personnel and conducted an inquiry. He called Tej Singh and Gopi and after inquiry asked both the parties to settle their dispute whereupon the appellants got agitated and Mihi Lal shot fire at him with an intention to kill and rest of the appellants threw bricks and stones upon the policemen causing injuries to his fellow policemen. Appellant Mihi Lal was apprehended at the spot alongwith country-made pistol and two cartridges and its *fard baramadagi* was prepared at the spot and the pistol and cartridges were sealed at the spot. Rest of the appellants fled away from the spot.

13. In cross-examination, he has stated that when he reached at the village to conduct inquiry the village Pradhan was not available. He did not examine any revenue record with regard to disputed land. About 15-20 persons had gathered at the spot. The appellants were sitting over Gopi's culvert (*Chabutra*). The appellants threw stones and bricks for

about 5-7 minutes. He did not fire at the appellants. They also tried to apprehend the rest of the appellants, but they ran away.

14. P.W.5 Dr. B.S. Dhariwal has stated that on 27.12.1980 he was posted as Medical Officer at PHC, Jharra and on that date, at about 09:30 a.m. he had examined Constable Tej Singh and found following injuries:-

(i) Contusion 5cm x 3cm on the right forearm 3cm below from the above joint of lateral side.

(ii) Traumatic swelling 3cm x 2 cm on left thigh, posterior aspect 8 cm above from the knee joint.

He has further stated that the same day at 09:00 a.m., he had examined Yad Ram and found following injuries over his body:-

(i) Traumatic swelling 2cm x 1 cm on the right shoulder.

(ii) Contusion 2.5 cm x 1 cm on the left thigh anterior aspect, 9 cm above from the knee joint.

(iii) Abraded contusion 1 cm x 0.5 cm on the left leg posterior aspect 1.5 cm above from the ankle joint.

(iv) Abrasion 1.5 cm x 0.5 cm on the left knee joint.

The Doctor has stated that the injuries to both the injured were caused by some hard and blunt object and were simple in nature and were about 3/4 days old. He has proved injury reports as Ext. Ka-4 and Ext. Ka-5, respectively, and has stated that the above injuries could have been caused on 26.12.1980 at 03:30 p.m. by throwing bricks and stones.

15. In cross-examination P.W.5 has stated that injury no.1 of Tej Singh could be caused by a piece of brick and stones. The swelling over the injury subsides within three days.

16. P.W.6 Banwarilal, is the Investigating Officer of the case and he has stated about the investigation carried out by him and has stated that

he had inspected the place of occurrence and prepared its site-plan which he proved as Ext. Ka-6. He recorded statements of witnesses and thereafter, filed charge-sheet which he proved as Ext. Ka-7 and Ext. Ka-8 and has further stated that he has filed charge-sheet under Section 25 of Arms Act, against accused Mihi Lal which he proved as Ext. Ka-9. He has further proved sanction given by the District Magistrate for prosecution of offence under Section 25 Arms Act, which he proved as Ext. Ka-10.

17. In cross-examination, P.W.6 has stated that he did not found blood splattered at the place of occurrence neither he found any pellets or empty cartridges or pieces of bricks and stones. He has said that he reached at the place of occurrence after four days. He did not submit any report of identification of the accused from injured constables. The fire was shot from a distance of about 20 steps. It was not stated that firing took place from the roof.

18. After closure of prosecution evidence the statements of accused were recorded under Section 313 Cr.P.C. in which they denied the prosecution case and surviving appellant Kishan Prasad has stated that in connivance with Tej Singh false case has been lodged against him due to enmity. The accused did not produce any evidence in their defence.

19. After hearing arguments of both the parties and perusal of evidence on record, the learned trial court observed that the prosecution has proved its case beyond reasonable doubt and the testimony of witnesses were consistent and reliable, and accordingly, the learned trial court found the appellants guilty of offence charged and convicted and sentenced the appellants to the term as indicated above.

20. Feeling aggrieved by the impugned judgment and order this appeal has been filed and during pendency of this appeal appellants, to wit, Gopi Singh, Ganga Sahay and Mihi Lal have died and the appeal against them has been abated vide order dated 15.02.2019. Now this appeal survives only with regard to surviving appellant- Kishan Prasad.

21. Heard learned counsel for the sole surviving appellant and learned A.G.A. and perused the material on record.

22. It is submitted on behalf of learned counsel for the appellant-Kishan Prasad that there is no evidence against the appellant regarding his involvement in the commission of the offence. It is further submitted that no test identification was carried out from the injured witnesses, which raises serious doubt over the involvement of appellant in the incident. It is also submitted that there was no common intention regarding the commission of the offence of attempt to murder, therefore, Section 34 IPC is not applicable and offence under Section 307 read with 34 IPC is not proved against him. Lastly, it is submitted that the learned trial court has appreciated the evidence on record, incorrectly and the conviction and sentence is not sustainable.

23. Per contra, learned A.G.A. has submitted that the prosecution case is proved beyond reasonable doubt. Testimony of the first informant, the injured witness and the eye-witness is consistent, trustworthy and reliable. It is also submitted that ocular evidence is supported by medical evidence, therefore, the appellant was rightly convicted and this appeal has no force and is liable to be dismissed.

24. It is settled law that in criminal case, the burden of proof always lies upon the prosecution to prove its case beyond reasonable doubt. The present case is based on direct evidence. The prosecution has examined three witnesses of fact i.e. P.W. 1 Deo Karan, P.W. 2 Constable Yad Ram Singh and P.W. 4 S.I Jai Prakash.

25. P.W.4 S.I. Jai Prakash is the first informant and according to the prosecution, he had gone to village- Mudhail alongwith other police personnel, to inquire about a dispute between Tej Singh and Gopi and others. It is the case of the prosecution that after reaching there, P.W.4 S.I. Jai Prakash called upon both the parties and asked him to settle their dispute by way of compromise, otherwise, approach the court concerned. It is the case of the prosecution that thereupon the appellants got agitated stating that Police has no concern with their dispute and when the

villagers asked them to settle their dispute then they got agitated and started throwing bricks and stones upon the Police party and other villagers as a result they sustained injuries from bricks and stones and appellant Mihi Lal fired at Police party with intention to kill, to which they escaped unhurt.

26. In this regard, P.W.4 S.I. Jai Prakash has supported the prosecution case. P.W.2 Constable Yad Ram Singh who had accompanied, the first informant, being a member of the Police party, has also supported the prosecution case in his statement recorded before the court. Both these witnesses are police personnel and out of them P.W.2 Constable Yad Ram Singh is also an injured witness whose presence at the spot cannot be doubted, for being an injured witness.

27. P.W.1 Dev Karan is an independent eye-witness, who has also supported the prosecution case. All the above three witnesses have specifically stated about the role of appellant with regard to the commission of the offence. A perusal of statements of these three witnesses shows that their testimony with regard to the incident is consistent and therefore, reliable and trustworthy. There are no major contradictions in their statement. The prosecution has filed and proved the injury reports of Constable Tej Singh and Constable Yad Ram Singh, who according to the prosecution, sustained injuries when bricks and stones were thrown upon them by the appellants. A perusal of these injury reports shows that Constable Tej Singh sustained three injuries of the nature of contusion and swelling and constable Yad Ram Singh sustained four injuries of the nature of traumatic swelling, abraded contusion, contusion and in the opinion of the doctor the injuries were caused by hard and blunt object. It is the case of the prosecution that bricks and stones were thrown upon these three injured witnesses, therefore, the medical evidence is consistent with ocular evidence of the prosecution case.

28. It has come in evidence and it is also the case of the prosecution that appellant- Mihi Lal (since deceased during the pendency of this

appeal) fired at first informant/ S.I. Jai Prakash by a country-made pistol whipping out from his pocket, to which S.I. Jai Prakash escaped unhurt. It has also come in evidence that appellant Mihi Lal was arrested at the spot along with country-made pistol and rest of the appellants fled away. Therefore, the role of surviving appellant Ganga Sahay is that of throwing stones and bricks at the Police party.

29. In this regard, it is submitted on behalf of the appellant that the incident occurred suddenly upon provocation, therefore, the alleged incident was not caused in furtherance of common intention as there was no pre-arranged plan or meeting of mind between the appellants to commit such offence, therefore, the conviction of the appellant Ganga Sahay under Section- 307 read with 34 IPC is not sustainable. It is further submitted that, in view of the above, the appellant- Ganga Sahay is not responsible for the act committed by Mihi Lal by firing at the first informant.

30. Now let us see whether there is evidence that all the appellants shared common intention and there was a pre-arranged plan by them so as to attract offence punishable under Section 307 read with 34 IPC against surviving appellant- Ganga Sahay.

31. In this regard, Section 34 IPC is relevant which is quoted below:-

“34. Acts done by several persons in furtherance of common intention.—

When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.”

32. Section 34 IPC lays down a scenario wherein a person is held to be vicariously liable for the act of others. It does not create any distinct offence, but it lays down the principle of constructive liability. However, before this liability arises, there are two requirements of the Section which need to be met. Firstly, there must exist a common intention i.e., some pre- arranged plan. Secondly, the person sought to be held liable

had participated in some manner in the act constituting the offence. The common intention should be formed prior to the commission of the act, but the gap need not be large. It can form on the spot as well. The existence of common intention needs to be proved by the evidence on record. Since it is difficult to prove common intention by direct evidence, it has to be inferred from the conduct of the accused, evidence and documents on record and other relevant circumstances.

33. Due reference in this regard may be made to the decision of Supreme Court in **Virendra Singh v. State of M.P.,(2010) 8 SCC 407** where in it was held as under: -

“37. Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

39. The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinised by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the

offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

40. The dominant feature of Section 34 is the element of intention and participation in action. This participation need not in all cases be by physical presence. Common intention implies acting in concert.

41. The essence of Section 34 IPC is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. Russell in his celebrated book Russell on Crime, 12th Edn., Vol. 1 indicates some kind of aid or assistance producing an effect in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony. It was observed by Russell that any act of preparation for the commission of felony is done in furtherance of the act.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability or an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. 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. Little or no distinction exists between a charge for an offence under a particular section and a charge under that section read with Section 34.”

34. Reference in this regard may be made to the recent decision of the Supreme Court in **Vasant v. State of Karnataka, 2025 SCC OnLine SC 337** wherein it was held as under: -

“75. It is, therefore, evident that every person charged with the aid of Section 34, must in some form or the other participate in the offence in order to make him liable thereunder...”

76. The element of participation in the commission of the offence is the chief feature that distinguishes Section 34, IPC from Section 149 IPC and other kindred sections. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder”, (pp. 457-458).”

35. In view of the above, Section 34 of the Indian Penal Code, in itself does not create any specific offence. It only intends to cover situations in which a criminal act is committed by a several persons; and it is not easy to demarcate the extent and quantum of participation by each one of such several persons. In such a situation, it was considered proper that all such persons be declared liable for the criminal act done by them jointly. This section embodies the principle of joint liability in the doing of criminal act, the essence of joint liability being the existence of a 'common intention'.

36. 'Common intention' should not be confused with 'similar intention'; it means 'intention common to all'. To come within the mischief of this section the following ingredients must be present:-

- (a) there must be a common intention to commit a crime;*
- (b) such act must be committed in furtherance of the common intention;*
- (c) such act must result in the commission of a crime;*
- (d) such common intention must be common to two or more persons;*
- (e) such persons (more than two or more) must have done the act or must have participated in the commission of that act.*

37. In **Mahboob Shah v. Emperor, 721 IA 148 (PC): AIR 1945 PC 118** the following principles were laid down by the court:

- (i) Under section 34 of the Penal Code, essence of liability is to be found in the existence of a common intention, animating the accused, leading to the doing of a criminal act in furtherance of such intention.*

(ii) To invoke the aid of section 34 successfully, it must be shown that the Criminal act complained against was done by one of the accused persons in furtherance of the common intention; if this is so then liability for the crime may be imposed on any one of the persons in the same manner as if the acts were done by him alone.

(iii) Common intention within the meaning of section 34 implies a prearranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done pursuant to the prearranged plan.

(iv) It is difficult, if not impossible, to procure direct evidence to prove the intention of an individual, in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case.

(v) Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial and if overlooked will result in miscarriage of justice.

(vi) The inference of common intention within the meaning of the term under section 34 should never be reached unless it is a necessary inference deductible from the circumstances of the case.

38. In **Jai Bhagwan v. State of Haryana, 1999 Cr LJ 1634 (SC)** it was held that to apply section 34 I.P.C., apart from the fact that there should be two or more accused, two factors must be established:--

(i) Common intention, and

(ii) Participation of the accused in the commission of an offence. If the common intention is proved but no overt act is attributed to the individual accused, section 34 will be attracted as essentially it involves vicarious liability, but if participation of the accused in crime is proved and common intention is absent, section 34 cannot be invoked. In every case it is not possible to have direct evidence of common intention. It has to be inferred from the facts and circumstances of each case.

39. In **Pandurang v. State of Hyderabad, AIR 1955 SC 216: 1955 Cr LJ 572** their Lordships of the Supreme Court observed that; it is well

established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a person can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. The incriminating facts must be incompatible with the innocence of the accused and incapable of explanation on any other reasonable hypothesis.

40. In **State of Uttar Pradesh v. Rohan Singh, 1996 Cr LJ 2884 (SC)** the Supreme Court relied upon the view of in **Pandurang v. State of Hyderabad, AIR 1955 SC 216: 1955 Cr LJ 572**, and observed that: Common intention necessarily implies a pre-arranged plan or prior concert or prior meetings of minds. Thus, there is a sharing of the purpose, which is lacking in a case where several persons have the same or similar intention. Several persons can simultaneously attack a man and each can have the same intention, namely, the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan.

41. In **Krishnamurthy alias Gunodu and Ors. vs. State of Karnataka (2022) 7 SCC 5211**, the Supreme Court has discussed Section 34 IPC. The relevant extract of the judgment is reproduced herein below:-

“26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or prearranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be prearranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is

necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co-participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack, etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.”

42. In view of the above legal position, if we look into the present case then from the evidence on record, it appears that the appellants did not share any common intention to commit attempt to murder and from the evidence on record it comes out that the appellants got agitated when the Police party and the other co-villagers asked them to settle their dispute with the other party amicably and at that spur of moment the appellants being got so agitated that they started throwing bricks and stones at the Police party. From the evidence it cannot be inferred that the appellants shared common intention and surviving appellant- Ganga Sahay could know that co-appellant Mihi Lal was having a pistol in his pocket which he will use in the incident. The reaction of the appellants upon being agitated goes to show that they reacted to show their protest and attempt to commit murder was not their ‘common intention’ at all. It was the appellant Mihi Lal who whipped out pistol from his pocket and shot single fire at the first informant, which he missed. So firing at the first informant by Mihi Lal was his own single act which does not mean

that other appellants also shared 'common intention' with him for this act of shooting at the first informant.

43. In view of the above, in the present case 'common intention' for the appellants, with regard to the offence under Section 307 IPC is lacking, therefore, the surviving appellant- Ganga Sahay is not found guilty of the offence punishable under Section 307 IPC with the aid of Section 34 I.P.C. and the findings of the trial court in this regard is based upon wrong appreciation of evidence and law.

44. So far as the offence under Section- 323 IPC is concerned, it is proved beyond reasonable doubt that the appellant Ganga Sahay participated in the commission of offence by throwing bricks and stones upon Police party as a result two policemen sustained simple injuries. In view of the above, the offence under Section- 323 IPC is proved against the surviving appellant- Ganga Sahay.

45. In view of the above discussion, so far as offence under Section 307 read with 34 IPC is concerned, it is not proved that appellant- Ganga Sahay shared common intention with co-appellant- Mihi Lal to fire at the Police party with an intention to kill, therefore, appellant- Ganga Sahay is held not guilty of the offence punishable under Section 307 read with 34 IPC and conviction and sentence awarded by the learned trial court to appellant Ganga Sahay for this offence is, hereby, set aside.

46. So far as offence punishable under Section- 323 IPC is concerned, this Court comes to the conclusion that the prosecution has been able to prove its case beyond reasonable doubt and that on 26.12.1980 at about 03:30 p.m. surviving appellant- Ganga Sahay caused simple injuries by throwing bricks and stones on Police party led by S.I. Jai Prakash, therefore, appellant- Ganga Sahay is found guilty of offence punishable under Section 323 IPC and conviction of the appellant Ganga Sahay for this offence is maintained. So far as sentence under Section 323 IPC is concerned, the appellant Ganaga Sahay was enlarged on bail during pendency of this appeal. The appellant has undergone some period in jail in this offence and the matter relates to the year 1980 i.e. more than 45

years ago the alleged incident occurred and this appeal is pending since year 1983, that is almost about 42 years and the appellant Ganga Sahay is about 97 years old at present. Keeping in view, the above peculiar circumstances of this case, I am of the view that it is not necessary to send the appellant Ganga Sahay back to jail and that it would meet the ends of justice if the sentence awarded to the appellant Ganga Sahay, for offence under Section 323 IPC, is reduced to the period of imprisonment already undergone.

47. In view of the above, upto the above extent, this appeal is **allowed partly**.

48. The appellant Ganga Sahay is on bail. He need not surrender. His personal bonds and surety bonds are cancelled and sureties are discharged of their liabilities.

49. The appellant shall execute a personal bond in the sum of Rs.25,000/- under Section 481 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 437-A of the Code of Criminal Procedure, 1973) for his appearance, in the event of an appeal being preferred against his acquittal.

50. Let a copy of this judgment alongwith record of the trial court be returned to court concerned for information and necessary compliance.

(Sanjiv Kumar,J.)

March 16, 2026

AdityaG