

**CASE COMMENT: COMMON INTENTION - BARENDRA KUMAR GHOSH V.
KING EMPEROR, AIR 1925 PC 1**

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INTRODUCTION

The Indian Penal Code (IPC) is the cornerstone of India's criminal justice system, serving as a legal framework that defines and punishes various criminal offenses. Within this comprehensive legal document, Section 302¹, Section 34² and Section 394³ stand out as critical provisions, each addressing distinct aspects of criminal conduct that have far-reaching consequences for society at large. Section 302⁴, Section 34⁵ and Section 394⁶ of the Indian Penal Code (IPC) are critical legal provisions that hold significant importance in the Indian criminal justice system. These sections define and penalize heinous crimes related to murder and robbery respectively, and their application is pivotal in ensuring justice and maintaining law and order in society.

“Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.”⁷

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Section 302 of the IPC⁸ deals with the grave offense of murder, elucidating the legal criteria that must be met for an act to be considered murder, and prescribing appropriate penalties for the convicted individuals. Murder is an act that not only ends a human life but also shatters the peace and security of the entire society. Understanding the legal nuances of this section is paramount in ensuring that justice is served, and society is protected from individuals who pose a threat to the sanctity of human life.

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¹ Indian Penal Code 1860, s 302

² Indian Penal Code 1860, s 34

³ Indian Penal Code 1860, s 394

⁴ Indian Penal Code 1860, s 302

⁵ Indian Penal Code 1860, s 34

⁶ Indian Penal Code 1860, s 394

⁷ Indian Penal Code 1860, s 302

⁸ Ibid

“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.”⁹

Section 34 of the Indian Penal Code (IPC)¹⁰ holds a critical place in the criminal justice system of India, as it addresses the principle of joint liability for criminal acts committed in furtherance of a common intention. This section recognizes that certain offenses are not perpetrated by individuals acting alone but by a group acting with a shared intent, highlighting the essence of collective responsibility in criminal law. Section 34 is an embodiment of the age-old legal principle that the actions of a group can be imputed to each individual in the group if the act is committed in furtherance of a common intention. It essentially implies that when two or more persons act in concert to achieve a common goal and an offense is committed in the course of such action, every person involved is liable for that offense as if he/she had committed it individually. Here are the key essentials of Section 34:

- **Common Intention:** Section 34 establishes that when several persons in furtherance of a common intention do a criminal act, each person is liable for that act as if he/she did it individually.
- **Unity of Purpose:** For the application of Section 34, there must be a shared intention or a pre-arranged plan among the individuals involved to commit a particular crime.
- **Criminal Act by Several Persons:** The section applies when a criminal act is committed by more than one person and is done in furtherance of their common intention.
- **Individual Liability:** Each person who shares the common intention is held individually liable for the entire act, even if his or her role in the act varies.

On the other hand, Section 394 deals with the offense of robbery and provides a framework for defining and punishing those who engage in violent theft or dacoity. Robbery not only jeopardizes the property and safety of individuals but also undermines the social fabric by breeding fear and insecurity. Section 394 plays a pivotal role in addressing such criminal behaviour and ensuring that society remains safeguarded against the menace of organized criminal activities.

⁹ Indian Penal Code 1860, s 34

¹⁰ Ibid

FACTS OF THE CASE

Armed with ammunition, the accused and three other people arrived at a post office. The three of them, comprising the accused, entered and made a demand for money from the Post Master while the fourth person waited outside. After the latter vocally refused, all three of them fired their weapons, killing the Postmaster with one of the bullets. All four men started to flee as the latter's shout sounded an alarm. The accused discharged his gun repeatedly while trying to get away before being apprehended. It was stated that there were only three people involved in the crime, not four; that the accused was actually the man out of the post office; that he never fired a shot at the victim; and that he had been informed that there wouldn't be any murders committed in this scheme, so he didn't intend to kill the victim.

He filed a not-guilty plea to the murder accusation but a guilty plea to the charge of causing grievous bodily harm in violation of Section 394, providing the exception he claimed he had not personally caused the harm. The trial judge gave the jury instructions citing Section 34. It was effectively stated that regardless of whether the accused fired the fatal shot, he must be found guilty of murder under the provisions of Section 302 read with Section 34 if it is determined that the deceased was killed in "furtherance of the common intention of all," including that of the accused.

ISSUE

- Whether the accused fired the fatal shot, he must be found guilty of murder in accordance with Section 302¹¹ read with Section 34¹² if it is determined that the dead were slain in "furtherance of the common intention of all," which includes that of the accused.
- Whether the accused are liable for murder and robbery under the Indian Penal Code 1860.

RULE

- Section 34 of the Indian Penal Code, 1860.¹³
- Section 302 of the Indian Penal Code, 1860.¹⁴

¹¹ Indian Penal Code 1860, s 302

¹² Indian Penal Code 1860, s 34

¹³ Indian Penal Code 1860, s 34

¹⁴ Indian Penal Code 1860, s 302

- Section 394 of the Indian Penal Code, 1860.¹⁵

ANALYSIS

Barendra Kumar Ghosh v. Emperor is a pivotal case that has shaped the understanding and application of Section 34 of the IPC. Section 34 of the Indian Penal Code (IPC) deals with acts done by several persons in furtherance of a common intention. It essentially holds that when several persons in furtherance of a common intention commit a criminal act, each of those persons is liable for that act as if he had done it alone. This section is crucial in cases where multiple individuals work together to commit a crime.

The key ingredients of this section are:

Criminal Act by Several Persons: Section 34 applies when several persons commit a criminal act. This means that the offense in question must involve the participation of more than one individual.

Common Intention: The most critical element of Section 34 is the existence of a common intention among the accused persons. Common intention signifies a shared resolve or understanding among the participants to commit a particular criminal act. It implies that they are working together with a collective purpose or design.

Participation in the Criminal Act: While having a common intention is essential, each person need not actively participate in every detail of the crime. They can have varying roles or levels of participation, but as long as their actions contribute to the commission of the offense and are in furtherance of the common intention, they can be held liable.

Individual Liability as if Acting Alone: Section 34 explicitly states that each person who is part of a criminal act with a common intention is liable for that act as if they had done it alone. In other words, they are held individually responsible for the entire criminal act, even though they acted together. This means that all participants can be punished as if they had committed the crime individually.

Absence of Common Intention: If there is no common intention among the accused individuals, Section 34 cannot be invoked. It is crucial to establish that the participants had a

¹⁵ Indian Penal Code 1860, s 394

shared intention to commit the crime; otherwise, they will not be collectively liable under this section.

The accused was charged with murder, although he argued that because he was not the one who fired the shot at the victim, he shall not be charged under section 302 of the IPC. The accused was not inside the post office but he was waiting for the others while they shot the postmaster. It was contended that although the accused was not the one who essentially shot the victim his waiting for the others amounts to abetting them in performing the act. It was thus concurred that the accused shared the common intention to kill the postmaster with the remaining three people. Moreover, it was believed that all were already sharing an interest in killing the postmaster as all of them were armed. The prosecution's case was that there was a common intention among the accused to commit the murder, and they acted together to achieve that intention. The court held that Section 34 could be applied when two or more persons acted in furtherance of a common intention. It emphasized that the essence of the provision was the element of a common intention to commit a criminal act. Even if each accused did not actively participate in every detail of the crime, they could still be held liable if they shared a common intention and acted in concert. The court emphasized that the crucial element for the application of Section 34 is the existence of a common intention among the accused. This means that even if individuals have different roles or levels of participation in a crime, they can still be held collectively liable if they share a common intention to commit that crime. Here the accused was not presently physically present when the shot was fired but he was outside of the office, waiting for the others and guarding. That is enough to determine that he shared a common intention with the killing of the victim. It reinforces the principle that mere presence at the scene of a crime is insufficient to establish guilt; there must be evidence of a common intention.

CONCLUSION

The court held the accused charged with section 302 with section 34 of the Indian Penal Code. The presence of common intention was established as it was evident that the accused was there at the crime scene, outside waiting for the others. This alone was considered for him to abet the murder and share a common intention of killing the victim. It is given that, when sharing common intention in a group liability for an act, each person involved in the criminal act is liable for the entire offense as if they had committed it individually. This provision ensures that all participants can be held accountable for the entirety of the crime, regardless of their specific

contributions. Here, the accused also contributed to the happening of the murder, so he will be held liable for the murder individually too as he played a part in achieving it.

