# Lallan Rai & Ors vs State Of Bihar on 14 November, 2002

## Equivalent citations: AIR 2003 SUPREME COURT 333, 2003 (1) SCC 268, 2002 AIR SCW 4820, 2003 AIR - JHAR. H. C. R. 140, (2002) 9 JT 334 (SC), 2002 (8) SCALE 434, 2002 (4) LRI 499, 2002 (9) JT 334, 2003 ALL MR(CRI) 788, 2003 CRIAPPR(SC) 65, 2003 SCC(CRI) 301, (2003) 1 JCR 129 (SC), 2002 (10) SRJ 562, 2002 (6) SLT 525, (2003) 1 ALLINDCAS 1002 (SC), (2003) ILR (KANT) (1) 686, (2003) 1 SUPREME 150, (2003) 3 EASTCRIC 15, (2002) 4 CURCRIR 278, (2002) 8 SCALE 434, (2003) 1 PAT LJR 294, (2003) 1 RECCRIR 11, (2003) 2 ALLCRIR 1440, (2003) 1 ALLCRILR 92, (2003) 1 CRIMES 314, (2003) 95 CUT LT 553, 2003 (1) ALD(CRL) 209

## Bench: Umesh C. Banerjee, B.N. Agrawal

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           CASE NO.:
Appeal (crl.)  93-95 of 2001

PETITIONER:
Lallan Rai & Ors.

RESPONDENT:
State of Bihar

DATE OF JUDGMENT: 14/11/2002

BENCH:
Umesh C. Banerjee & B.N. Agrawal.

JUDGMENT:
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JUDGMENT BANERJEE,J.

Four decades ago, the Constitution Bench in Mohan Singh (Mohan Singh v. State of Punjab 1962 Supp. (3) SCR 848) has been rather lucid in its expression as regards differentiation between Section 149 and Section 34 of the Indian Penal Code. In Mohan Singh this Court stated :

> ". Like Section 149, Section 34 also deals with cases of constructive criminal liability. It provides that where 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. The essential constituents of the vicarious criminal liability prescribed by Section 34 is the existence of common intention. If the common intention in question animates the accused persons and if the said common intention leads to the commission of the criminal offence charged, each of the persons sharing the common intention is constructively liable for the criminal act

> done by one of them. Just as the combination of persons sharing the same common object is one of the features of an unlawful assembly, so the existence of a combination of persons sharing the same common intention is one of the features of Section 34. In some ways the two sections are similar and in some cases they may overlap. But, nevertheless, the common intention which is the basis of Section 34 is different from the common object which is the basis of the composition of an unlawful assembly. Common intention denotes action-in- concert and necessarily postulates the existence of a pre-arranged plan and that must mean a prior meeting of minds. It would be noticed that cases to which Section 34 can be applied disclose an element of participation in action on the part of all the accused persons. The acts may be different; may vary in their character, but they are all actuated by the same common intention. It is now well-settled that the common intention required by Section 34 is different from the same intention or similar intention. As has been observed by the Privy Council in Mahbub Shah v. Emperor (1945 L.R. 72 I.A. 148), common intention within the meaning of Section 34 implies a pre- arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre- arranged plan and that the inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case."

Four decades later, however, a Three-Judge Bench of this Court in Suresh (Suresh & Anr. v. State of U.P. 2001 (3) SCC

673) had the following to state pertaining to Section 34 of the Indian Penal Code.

> "Section 34 of the Indian Penal Code recognises the principle of vicarious liability in criminal jurisprudence. It makes a person liable for action of an offence not committed by him but by another person with whom he shared the common intention. It is a rule of evidence and does not create a substantive offence. The Section gives statutory recognition to the commonsense principle that if more than two persons intentionally do a thing jointly, it is just the same as if each of them had done it individually. There is no gainsaying that a common intention presupposes prior concert, which requires a prearranged plan of the accused participating in an offence. Such preconcert or preplanning may develop on the spot or during the course of commission of the offence but the crucial test is that such plan must precede the act constituting an offence. Common intention can be formed previously or in the course of occurrence and on the spur of the moment. The existence of a common intention is a question of fact in each case to be proved mainly as a matter of inference from the circumstances of the case.
>
> The dominant feature for attracting Section 34 of the Indian Penal Code (hereinafter referred to as "the Code") is the element of participation in absence resulting in the ultimate "criminal act". The "act"

referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous.

Participation in the crime in furtherance of the common intention cannot conceive of some independent criminal act by all accused persons, besides the ultimate criminal act because for that individual act law takes care of making such accused responsible under the other provisions of the Code. The word "act" used in Section 34 denotes a series of acts as a single act. What is required under law is that the accused persons sharing the common intention must be physically present at the scene of occurrence and be shown not to have dissuaded themselves from the intended criminal act for which they shared the common intention. Culpability under Section 34 cannot be excluded by mere distance from the scene of occurrence. The presumption of constructive intention, however, has to be arrived at only when the court can, with judicial servitude, hold that the accused must have preconceived the result that ensued in furtherance of the common intention. A Division Bench of the Patna High Court in Satrughan Patar v. Emperor (AIR 1919 Pat 111) held that it is only when a court with some certainty holds that a particular accused must have preconceived or premeditated the result which ensued or acted in concert with others in order to bring about that result, that Section 34 may be applied."

What then is the fact situation said to have been proved in the present case ? It is in this context the factual score thus ought to be noticed at this juncture.

On the factual score, it appears that 14 accused persons were charged under Sections 302/149 and 307/34 IPC for committing the murder of Bindeshwari Rai on 19th March, 1992 at 8.00 p.m. All the 14 accused persons were held guilty for the murder by the learned Sessions Judge : whereas accused Rajendra Rai, Uma Shankar Rai, Sheo Bachan Rai, Shila Nath Rai, Dharm Nath Rai, Satyendra Sahni alias Satyendra Kumar Sahni and Bankey Rai have been convicted under Section 302 IPC and sentenced to undergo rigorous imprisonment for life. All the 14 accused persons, namely Rajendra Rai, Lallan Rai son of Rajendra Rai, Uma Shankar Rai, Prithvi Rai, Ram Janam Rai, Sudarshan Rai, Sheo Bachan Rai, Sipar Rai, Birendera Rai, Dharm Nath Rai, Bankey Rai, Shila Nath Rai, Lallan Rai son of Bankey Rai and Satyendra Sahni alias Satyendra Kumar Sahni have been held guilty under Section 302/149 IPC and have been convicted thereunder. Each of them has been sentenced to undergo imprisonment for life under Section 302/149 IPC. All the convicts are, however, presently on bail.

The convicts Uma Shankar Rai, Ram Janam Rai, Sudarshan Rai, Prithvi Rai, Lallan Rai son of Rajendra Rai have been held guilty under Section 307/34 IPC and they have been convicted thereunder. Each of them has been sentenced to undergo R.I. for five years under Section 307/34 IPC.

The High Court, however, on appeal on 10th May, 2000, confirmed the conviction and sentences passed by the learned Sessions Judge under Section 302 IPC against Rajendra Rai, Uma Shankar Rai, Shila Nath Rai, Bankey Rai, Dharm Nath Rai and Sheo Bachan Rai but passed an order for acquittal for the accused Satyendra Sahni of the charge under Section 302 IPC. As regards Uma Shankar Rai, Ram Janam Rai, Sudarshan Rai, Prithvi Rai and Lallan Rai, the High Court also confirmed the conviction and sentences under Section 307 read with Section 34 IPC. The High Court however, acquitted all the accused persons convicted and sentenced under Section 302/149 IPC and hence the appeal before this Court upon the grant of leave. At this juncture, it would be convenient to advert to the prosecution case briefly, so as to appreciate the contentions raised. The case of the prosecution, as would appear from the fardbeyan of Birendra Rai (PW.9), in short, is that on the day of Holi festival i.e. 19.3.1992 at about 8 p.m., he along with his brothers Bindeshwari Rai , Ruplal Rai and Ram Dahin Rai was returning from Taraiya Bazar. When they reached their village, they saw all the 14 accused persons sitting at the house of appellant Rajendra Rai variously armed with weapons. It is alleged that on the instigation of appellant Rajendra Rai, all the accused persons encircled the informant and his companions. Thereafter appellant Rajendra Rai, Satyendra Sahni and Uma Shankar Rai inflicted injuries with sword on the head of Bindeshwari Rai. Thereupon, appellant Shila Nath Rai also gave a sword blow on his head. Like the abovenamed appellants, other appellants Bankey Rai and Dharm Nath Rai assaulted deceased Bindeshwari Rai with 'farsa'. When Bindeshwari Rai became senseless while appellant Sheo Bachan Rai caused injury with Bhala, the other accused persons caused injuries with their respective weapons. The informant further stated that when he wanted to save his brother, appellant Uma Shankar Rai attacked him with sword but the blow was warded off. When P.Ws. Ram Dahin and Ruplal tried to intervene, appellant Lallan Rai son of Rajendra Rai fired his pistol causing injury to Ruplal Rai. It has been further alleged that the accused persons after committing the murder of Bindeshwari Rai, threw his body in a maize field, which was situated adjoining north to the road. The informant and the other witnesses have claimed to have identified the accused persons in the moonlit night. On the basis of the aforesaid statement, Officer Incharge of Taraiya Police Station took up investigation and ultimately having found a prima facie case, submitted charge sheet. Thereupon, the Chief Judicial Magistrate took cognizance of the offence and committed the case to the Court of Session calling upon the appellants to face trial. The records depict that one Dr. Dharamnath Singh (PW.11) held the post-mortem examination on the dead body of Bindeshwari Rai and he found the following ante-mortem injuries on the person of the body :

(i.) Multiple incised wounds about eight in number of varying dimension on the scalp, more on left side than on the right side, mid-portion.

(ii) Incised wound about 3" x " bone deep on the left cheek.

(iii) Incised wound about 1" x " skin deep on the back of the neck.

(iv) Multiple bruises of varying dimension on the back of chest wall on both sides.

(v) Penetrating wound about " in diameter muscle deep on the right side on the back of waist.

(vi) Incised wound about 3" x 1" bone deep on the right side of chin.

On dissection, there were multiple fractures of scalp bone, laceration of underlying membranes and brain matter with collection of clotted blood in immediate vicinity of the injured parts. On further dissection fracture of the right side of ramus of the mandible was disclosed. Rigor mortis was present on all the limbs.

The doctor's evidence reveals that the death of Bindeshwari Rai was caused due to haemorrhage and shock as a result of injuries to vital organs like brain and mandible caused by sharp cutting weapon as also by sharp penetrating weapon such as Bhala. The post-mortem examination was conducted within 24 hours. Incidentally, there is nothing in the cross-examination of the Doctor to discredit the evidence of the prosecution with regard to the nature of injuries as also to the manner of assault. It is on this state of the situation that Mr. PS Mishra, learned Senior Advocate, appearing for the appellants with his usual eloquence rather strongly contended that in view of the findings recorded for charges under Section 302/149 IPC by the High Court against which no appeal is preferred in this Court, it is clearly a case where the appellants are supposed to have been convicted for their individual acts and acts done in furtherance of the common intention of all, which developed, if at all, in course of the assault on Bindeshwari Rai. In the absence of any appeal against the said acquittal for the offence under Section 302/149 IPC it will not be legal to go by the evidence of existence of any pre-planning etc. Though there is evidence that appellants who are convicted under Section 302 IPC caused injury upon deceased Bindeshwari Rai by lethal weapons on the head and various other parts of his body, the medical evidence is clear that death was caused due to haemorrhage and shock caused by the injuries to vital organs like brain and also mandible caused by sharp-cutting weapons may be Farsa and sword and also sharp cutting penetrating weapon such as a Bhala.

In the absence of evidence as to who caused fatal injury or which injury in particular was fatal, conviction under Section 302 IPC of as many as six appellants (one of whom who was charged to have hit on the head of the victim by sword has been acquitted by the High Court) is not sustainable at all.

It is well settled that culpable homicide is genus and murder is the specie and that all murders are culpable homicide but not vice-versa. A combined reading of the provisions in Chapter XVI of the IPC with respect to offences affecting the human body and the exceptions and illustrations would show that without ascertaining as to who caused the death or that one of many injuries inflicted by a certain person alone was the cause of death, no one can be, much less a number of persons together, be convicted for their acts under Section 302 IPC simpliciter. More than one person together can be convicted only with the aid of Section 149 IPC (if their number is more than five) or Section 34 IPC if they act in furtherance of common intention. Since the appellants, however are acquitted under Section 302/149 IPC, the High Court could not have convicted as many as six persons under Section 302 IPC.

Mr. Mishra further contended that it is settled law that several persons may have similar intention yet they may not have the common intention in furtherance of which they participated in action.

Elaborate discussion of the principles and dominant features for attracting Section 34 IPC are well discussed and explained in one of the latest pronouncements of this Court in Suresh (supra).

In para 44 of the judgment in Suresh (supra) this Court (the majority view) stated:

> "Approving the judgments of the Privy Council in Barendra Kumar Ghosh [AIR 1925 PC 1] and Mahbub Shah [AIR 1945 PC 118] cases a three- Judge Bench of this Court in Pandurang v. State of Hyderabad [AIR 1955 SC 216] held that to attract the applicability of Section 34 of the Code the prosecution is under an obligation to establish that there existed a common intention which requires a prearranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of all. This Court had in mind the ultimate act done in furtherance of the common intention. In the absence of a prearranged plan and thus a common intention even if several persons simultaneously attack a man and each one of them by having his individual 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. In a case like that each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any or the other. The Court emphasised the sharing of the common intention and not the individual acts of the persons constituting the crime. Even at the cost of repetition it has to be emphasised that for proving the common intention it is necessary either to have direct proof of prior concert or proof of circumstances which necessarily lead to that inference and "incriminating facts must be incompatible with the innocence of the accused and incapable of explanation or any other reasonable hypothesis". Common intention, arising at any time prior to the criminal act, as contemplated under Section 34 of the Code, can thus be proved by circumstantial evidence."

In Suresh (supra) this Court while recording the dominant feature for attracting Section 34 has the following to state:

> "The dominant feature for attracting Section 34 of the Indian Penal Code (hereinafter referred to as "the Code") is the element of participation in absence resulting in the ultimate "criminal act".

The "act" referred to in the later part of Section 34 means the ultimate criminal act with which the accused is charged of sharing the common intention. The accused is, therefore, made responsible for the ultimate criminal act done by several persons in furtherance of the common intention of all. The section does not envisage the separate act by all the accused persons for becoming responsible for the ultimate criminal act. If such an interpretation is accepted, the purpose of Section 34 shall be rendered infructuous."

For true and correct appreciation of legislative intent in the matter of engrafting of Section 34 in the Statute Book, one needs to have a look into the provision and as such Section 34 is set out as 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."

A plain look at the Statute reveals that the essence of Section 34 is simultaneous consensus of the mind of persons participating in the criminal action to bring about a particular result. It is trite to record that such consensus can be developed at the spot. The observations above obtain support from the decision of this Court in Ramaswami Ayyangar & Ors. v. State of Tamil Nadu [AIR 1976 SC 2027].

In the similar vein the Privy Council in (Barendra Kumar Ghosh v. King Emperor [AIR 1925 PC 1: 26 Cri. LJ 431] stated the true purport of Section 34 as below:

> "The words of Section 34 are not to be eviscerated by reading them in this exceedingly limited sense. By Section 33 a criminal act in Section 34 includes a series of acts and, further, 'act' includes omission to act, for example, an omission to interfere in order to prevent a murder being done before one's very eyes. By Section 37, when any offence is committed by means of several acts whoever intentionally cooperates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence. Even if the appellant did nothing as he stood outside the door, it is to be remembered that in crimes as in other things 'they also serve who only stand and wait.'"

The above discussion in fine thus culminates to the effect that the requirement of statute is sharing the common intention upon being present at the place of occurrence. Mere distancing himself from the scene cannot absolve the accused though the same however depends upon the fact-situation of the matter under consideration and no rule steadfast can be laid down therefor. Turning attention to the factual score, once again, be it noticed that the High Court has rendered the submissions of the defence as regards the witnesses being on inimical terms as totally hypothetical guesswork de hors the realities and in justification thereof stated "Simply because another passage was available for the prosecution party to go to their houses, it would be difficult to hold that they were not going through the road in question where occurrence took place." Incidentally, the evidence of PW.7 Ram Dahin Rai, PW.9 Birendra Rai and PW.10 Ruplal Rai, the informant, stand out to be in full corroboration of the prosecution's case that no sooner Bindeshwari Rai and his companions arrived at the place of occurrence, Rajendra Rai exhorted to kill and thereafter assaulted him with sword. The High Court on appreciation of the factual situation recorded the same and further stated that Uma Shankar Rai also caused injury on the head of Bindeshwari Rai by sword and when the latter fell down in a maize field, Shila Nath Rai assaulted him with sword and Bankey Rai with Farsa on his neck. It is on this score the High Court in fine concludes as regards the appreciation of evidence to the effect:

> "Thus in view of the consistent evidence of the injured eye witness, there appears no reason to interfere with the findings of the trial court so far it is with respect to those appellants who have been convicted under Section 302 IPC."

The next issue seems to be rather important and we think it expedient to quote paragraph 13 of the judgment impugned for its proper appreciation :

> "The next question, however, rises whether the conviction and sentence against all the accused persons under Section 302 read with Section 149 IPC can sustain. At the very outset it may be noticed although the trial court has convicted these appellants under this count but no finding has at all been recorded whether the appellants were the members of unlawful assembly and that such unlawful assembly had the knowledge that the main accused persons had the common object to commit the murder of Bindeshwari Rai. Because as would appear from the case of the prosecution, the accused persons were sitting at the Baithaka of appellant Rajendra Rai and this was nothing unusual since it was the day of Holi festival. This is not the case of the prosecution that these accused persons had the knowledge or any such information that deceased Bindeshwari Rai and his companion would return from Taraiya Bazar to the village through that very path and at that very time. Rather the above fact would show that the occurrence in case took place all of a sudden. Unless and until there is any evidence of the prosecution that all the accused persons had assembled at the place of occurrence with a common object to commit the murder of Bindeshwari Rai, it would not be proper to hold them guilty under Section 302 read with 149 IPC. Therefore, the conviction against such appellants can at best be recorded under Section 324/149 IPC. Because the evidence on record suggests that it was the individual act of appellants Rajendra Rai, Uma Shankar Rai, Shila Nath Rai, Bankey Rai, Dharm Nath Rai and Shiv Bachan Rai, who had committed the murder of Bindeshwari Rai with their respective weapons."

It is on the basis of the observations as above, the High Court came to a finding that the appeal on behalf of the appellants Rajendra Rai, Uma Shankar Rai, Shila Nath Rai, Bankey Rai, Dharam Nath Rai and Sheo Bachan Rai ought to be dismissed and their conviction and sentence under Section 302 of the Indian Penal Code as recorded by the trial court stood confirmed. As regards the case for appellants Uma Shankar Rai, Ram Janam Rai, Sudarshan Rai, Prithvi Rai and Lallan Rai, the High Court did place strong reliance on the evidence of the injured witnesses ascribing them to be most acceptable and trustworthy evidence and as such confirmed the sentence under Section 307 read with Section 34 of the Indian Penal Code.

It is the conviction under Section 302 which is said to be not in accordance with law and as such Mr. Mishra has been rather vocal and emphatic on that direction. It is axiomatic that procedural law is the hand-maid of justice and the Code of Criminal Procedure is no exception thereto. Its incorporation in the Statute Book has been to sub-serve the ends of justice and non- observance of the technicalities does not and cannot frustrate the concept of justice since technicality alone would not out-weigh the course of justice.

We, however, hasten to add that in the event, however, there being prejudice leading to a failure of justice, it cannot but be treated to be an illegality, which is otherwise incurable in nature. In one of the early decisions of this Court (Willie (William) Slaney v. The State of Madhya Pradesh - 1955 (2)

SCR 1140), the Full Bench declared and settled the law on this score and it seems for all times to come. This Court in a recent decision (Kammari Brahmaiah &Ors. v. Public Prosecutor, High Court of A.P. JT 1999 (1) SC 259) once again reiterated the law so settled by Willie Slaney (supra) in the similar vein and same tune. Incidentally, Willie Slaney (supra) was decided in the year 1955 and on the basis of the then existing Code of 1898, whereas Brahmaiah (supra) has considered the new Code of 1973 and after adumbrating the observations of Willie Slaney, this Court in Brahmaiah observed :

> "The aforesaid discussion leaves no doubt that non-framing of charge would not vitiate the conviction if no prejudice is caused thereby to the accused. As observed in the aforesaid, the trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. In the present case, accused were tried on the prosecution version that all of them went at 3.30 p.m. in the field of the deceased; they picked up the quarrel with him, inflicted injuries to the deceased as narrated by the prosecution witnesses, accused no.3 to 6 participated as stated above; the statements were recorded under Section 313 of the Cr.P.C. and the questions were asked to the effect that they jointly came at 3.30 p.m. and caused injuries to the deceased as stated by the prosecution witnesses and the role assigned to accused no.3 to 6 was also specifically mentioned. Hence, it is apparent that no prejudice is caused to the accused who were charged for the offence under Section 302, by not framing the charge for the offence punishable under Section 302 read with 149. In this view of the matter, the conviction of the accused no.3 to 6 for the offence punishable under Section 325 read with 149 cannot be said to be anyway illegal which require to be set aside."

It is in this context Section 464 Cr.P.C. ought to be noticed at this juncture. Section 464 Cr.P.C. reads thus :

> "464. Effect of omission to frame, or absence of, or error in, charge (1) No finding, sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.
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> (2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may
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> (a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit;

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

As regards the interpretation of Section 464 this Court has the following to state in Kammari (supra) at paragraph 7:

"The aforesaid Section is in mandatory terms and specifically provides what is to be done in cases where charge is not framed or there is an error, omission or irregularity in framing of the charge. From the unequivocal terms of the section, it can be stated that finding, sentence or order could be set aside only in those cases where the facts are such that no valid charge could be preferred against the accused in respect of the facts proved. Secondly, if the facts are such that charge could be framed and yet it is not framed, but there is no failure of justice, has in fact been occasioned thereby the finding, sentence or order of the Court of competent jurisdiction is not to be set aside on that ground. Thirdly, if there is failure of justice occasioned by not framing of the charge or in case of an error, omission or irregularity in charge re-trial of the case is to be directed under sub-section (2)."

Incidentally, Section 464 corresponds to the provisions contained in Sections 232(2), 535 and 537(6) of the old Code. It is in this context the law laid down by this Court in Kammari (supra) ought also to be noticed. This Court in paragraph 14 of the report stated as below:-

"14. The aforesaid discussion leaves no doubt that non- framing of charge would not vitiate the conviction if no prejudice is caused thereby to the accused. As observed in the aforesaid, the trial should be fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. Criminal Procedure Code is a procedural law and is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities."

Similar is the observation of this Court in Narinder Singh v. State of Punjab (2000 (4) SCC 603) recording therein that if the ingredients of the Section are present, conviction in regard thereto can be sustained.

The evidence available on record in particular that of injured eye witnesses, namely, PWs.7, 9 and 10 and the "Fardbayan" which was recorded without any loss of time to the effect that all the accused persons encircled the informant and other witnesses and inflicted injuries on Bindeshwari Rai (deceased) by deadly weapons resulting into his death it is trustworthy and acceptable and question of decrying the evidentiary value thereof does not and cannot arise, more so, having regard to the corroborative evidence available on record by the doctor who conducted the post-mortem. The entire gamut of the matter in issue leaves no manner of doubt the concerted action by reason of simultaneous conscious mind of persons participating in the action to bring about the death of

Bindeshwari Rai and it is this piece of evidence which brings in the element of Section 34 even though no charge was framed thereunder. This conviction and sentence under Section 302 of the Indian Penal Code can be maintained by adding Section 34 of the Indian Penal Code thereto that is to say under Section 302/34 of the Indian Penal Code.

As regards the conviction under Section 307 of the Indian Penal Code, be it noted that upon consideration of the injury report as sustained by Ruplal Rai (PW.10), Ram Dahin Rai (PW.7) and Birendra Rai (PW.9), the factum of causing grievous hurt though established but conviction under Section 307/34 of the Indian Penal Code in the interest of justice ought to be altered to under Section 326/34 of the Indian Penal Code. It is ordered accordingly. The sentence, however, be also altered to a period of two years without however imposition of any fine. The appeals thus stand disposed of in the manner indicated above. The appellants be taken into custody to serve out their respective sentences and in the event they have already served out their sentence, their bail bonds shall stand discharged.