

(Ori). *Chittaramal v State of Rajasthan*, (2003) 2 SCC 266 [LNIND 2003 SC 14] : AIR 2003 SC 796 [LNIND 2003 SC 14] : 2003 Cr LJ 889 , points of similarity and distinction explained in the case.

247. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .

248. *Surinder Singh v State of Punjab*, (2003) 10 SCC 66 [LNIND 2003 SC 652] .

249. *Lachman Singh v The State*, 1952 SCR 839 [LNIND 1952 SC 21] : AIR 1952 SC 167 [LNIND 1952 SC 21] : 1952 Cr LJ 863 and *Karnail Singh v State of Punjab*, 1954 SCR 904 [LNIND 1953 SC 126] : AIR 1954 SC 204 [LNIND 1953 SC 126] : 1954 Cr LJ 580 .

250. *Sangappa Sanganabasappa v State of Karnataka* (2010) 11 SCC 782 [LNIND 2010 SC 866] : (2011) 1 SCC (Cr) 256; *Baital Singh v State of UP*, AIR 1990 SC 1982 : 1990 Cr LJ 2091 : 1990 Supp SCC 804 ; *Ramdeo Rao Yadav v State of Bihar*, AIR 1990 SC 1180 [LNIND 1990 SC 126] : 1990 Cr LJ 1983 .

251. *Dahari v State of UP*, AIR 2013 SC 308 2012 (10) Scale 160, (2012) 10 SCC 256 [LNIND 2012 SC 638] ; *Jivan Lal v State of MP*, 1997 (9) SCC 119 [LNIND 1996 SC 2679] ; and *Hamlet @ Sasi v State of Kerala*, AIR 2003 SC 3682 [LNIND 2003 SC 688] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] ; *Sanichar Sahni v State of Bihar*, AIR 2010 SC 3786 [LNIND 2009 SC 1350] ; *S Ganesan v Rama Raghuraman*, 2011 (2) SCC 83 [LNIND 2011 SC 5] ; *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] : JT 2012 (8) SC 530 [LNIND 2012 SC 545] .

252. *Manik Shankarrao Dhotre v State of Maharashtra*, 2008 Cr LJ 1505 (Kar); *State of Maharashtra v Mahipal Singh Satyanarayan Singh*, 1996 Cr LJ 2485 .

253. *Brahmjit Singh v State*, 1992 Cr LJ 408 (Del).

254. *Prem v State of Maharashtra*, 1993 Cr LJ 1608 (Bom). 255. *Dukhmochan Pandey v State of Bihar*, AIR 1998 SC 40 [LNIND 1997 SC 1255] : 1998 Cr LJ 66 .

256. *State of Gujarat v Chandubhai Malubhai Parmar*, AIR 1997 SC 1422 [LNIND 1997 SC 627] : 1997 Cr LJ 1909 (SC).

257. *Ghoura Chandra Naik v State of Orissa*, 1992 Cr LJ 275 (Ori). See *Rameshchandra Bhogilal Patel v State Of Gujarat*, 2011 Cr LJ 1395 (Guj) (Section 420/34).

258. *Dev Cyrus Colabawala v State of Maharashtra*, 2010 Cr LJ 758 (Bom).

259. *Atambir Singh v State of Delhi*, 2016 Cr LJ 568 (Del).

260. *Vinay Kumar Rai v State of Bihar*, (2008) 12 SCC 202 [LNIND 2008 SC 1646] : 2008 Cr LJ 4319 : AIR 2008 SC 3276 [LNIND 2008 SC 1646] .

261. *Nagaraja v State of Karnataka*, (2008) 17 SCC 277 [LNIND 2008 SC 2484] : AIR 2009 SC 1522 [LNIND 2008 SC 2484] : one accused struck on the road with an iron rod, two others used fists and kicks, there was nothing more common, the two could be convicted under section 323. See also *Mohan Singh v State of MP* AIR 1999 SC 883 [LNIND 1999 SC 69] : (1999) 2 SCC 428 [LNIND 1999 SC 69] , *Abdul Wahid v State of Rajasthan*, AIR 2004 SC 3211 [LNIND 2004 SC 1454] : (2004) 11 SCC 241 [LNIND 2004 SC 1454] ; *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : (1999) 1 SCC 174 [LNIND 1998 SC 879] .

262. *Chandra Kaur v State of Rajasthan*, 2016 Cr LJ 3346 : AIR 2016 SC 2926 [LNINDU 2015 SC 139] .

263. *Suresh v State of UP* AIR 2001 SC 1344 [LNIND 2001 SC 623] : (2001) 3 SCC 673 [LNIND 2001 SC 623] quoted from *Shatrughan Patar v Emperor*. See also *Sewa Ram v State of UP*, 2008 Cr LJ 802 : AIR 2008 SC 682 [LNIND 2007 SC 1452] ; *Abaram v State of MP*, (2007) 12 SCC 105 [LNIND 2007 SC 546] : (2008) 2 SCC Cr 243 : 2007 Cr LJ 2743 .

264. *Bhanwar Singh v State of MP*, (2008) 16 SCC 657 [LNIND 2008 SC 1246] : AIR 2009 SC 768 [LNIND 2008 SC 1246] ; *Vajrapu Sambayya Naidu v State of AP*, AIR 2003 SC 3706 [LNIND 2003 SC 176] : (2004) 10 SCC 152 [LNIND 2003 SC 176] .

THE INDIAN PENAL CODE

CHAPTER II GENERAL EXPLANATIONS

THIS Chapter is for the most part an elaborate interpretation clause. It is a key to the interpretation of the whole Code. The leading terms used are here defined and explained and the meanings thus, announced are steadily adhered to throughout the subsequent chapters.

170. [s 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 intention¹ of all, each of such persons is liable for that act in the same manner as if it were done by him alone.]

COMMENT—

Introduction.—Ordinarily, no man can be held responsible for an independent act and wrong committed by another. However, [section 34 of the IPC, 1860](#) makes an exception to this principle. It lays down a principle of joint liability in the doing of a [criminal act](#). The essence of that liability is to be found in the existence of common intention, animating the accused leading to the doing of a [criminal act](#) in furtherance of such intention. It deals with the doing of separate acts, similar or adverse by several persons, if all are done in furtherance of common intention. In such situation, each person is liable for the result of that as if he had done that act himself.¹⁷¹ The soul of [section 34, IPC, 1860](#) is the joint liability in doing a [criminal act](#).¹⁷²

[s 34.1] History.—

[Section 34 IPC, 1860](#) is part of the original Code of 1860 as drafted by Lord Macaulay. The original section as it stood was "When a [criminal act](#) is done by several persons, each of such persons is liable for that act in the same manner as if the act was done by him alone." However, on account of certain observations made by Sir Barnes Peacock, CJ, in *Queen v Gora Chand Gope*,¹⁷³ it was necessary to bring about a change in the wordings of the section. Accordingly, in the year 1870 an amendment was brought which introduced the following words after "when a [criminal act](#) is done by several persons..." "...in furtherance of the common intention...". After this change, the section has not been changed or amended ever.

[s 34.2] Object.—

The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar v State of Punjab*,¹⁷⁴ the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common

intention in order to attract the provision.^{175.} *Barendra Kumar Ghosh v King Emperor*,^{176.} stated the true purport of section 34 as:

The words of s.34 are not to be eviscerated by reading them in this exceedingly limited sense. By s.33 a [criminal act](#) in s.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 s.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'.^{177.}

[s 34.3] **Principle.—**

This section is only a rule of evidence and does not create a substantive offence. [Section 34 IPC, 1860](#) lays down the principle of constructive liability. The essence of [section 34 IPC, 1860](#) is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. [Section 34 IPC, 1860](#) stipulates that the act must have been done in furtherance of the common intention. 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.^{178.} Therefore, [section 34, IPC, 1860](#), would apply even if no charge is framed under that section provided of course from the evidence it becomes clear that there was pre-arranged plan to achieve the commonly intended object.^{179.} Thus, where six persons were charged under sections 148, 302/149 and 307/149, [IPC, 1860](#), but two were acquitted, the remaining four accused could be convicted on the charges of murder and attempt to murder with the aid of [section 34 of the Penal Code](#).^{180.} This section really means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them had done it individually.^{181.} If the [criminal act](#) was a fresh and independent act springing wholly from the mind of the doer, the others are not liable merely because when it was done they were intending to be partakers with the doer in a different [criminal act](#).

[s 34.4] **Scope, ambit and applicability.—**

[Section 34 of the Indian Penal Code](#) recognises the principle of vicarious liability in criminal jurisprudence. The said principle enshrined under Section 34 of the Code would be attracted only if one or more than one accused person act conjointly in the commission of offence with others. It is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked. So long as the evidence brought by the prosecution would disclose that one or more accused persons had acted in concert with other persons not named or identified, the liability under Section 34 of the Code would still be attracted. Once the other accused stands acquitted in absence of said evidence, the vicarious liability under section 34 of the Code would not be attracted so as to hold the accused liable for the offence with the aid of Section 34 of the Code. However, the accused would still be liable for the offence if the injury or injuries leading to offence can be attributed to him.^{182.} A bare reading of this section shows that the section could be dissected as follows:

- (a) [Criminal act](#) is done by several persons;
- (b) Such act is done in furtherance of the common intention of all; and
- (c) Each of such persons is liable for that act in the same manner as if it were done by him alone.

- (d) But, it is not necessary that all such persons should be named and identified before the liability under [Section 34 of the Indian Penal Code](#) can be invoked.^{183.}

In other words, these three ingredients would guide the court in determining whether an accused is liable to be convicted with the aid of section 34. While first two are the acts which are attributable and have to be proved as actions of the accused, the third is the consequence. Once the [criminal act](#) and common intention are proved, then by fiction of law, criminal liability of having done that act by each person individually would arise. The [criminal act](#), according to [section 34 IPC, 1860](#) must be done by several persons. The emphasis in this part of the section is on the word "done".^{184.} 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.^{185.} Under [section 34 of the Indian Penal Code](#), a pre-concert in the sense of a distinct previous plan is not necessary to be proved.^{186.} It is a well settled law that mere presence or association with other members is not *per se* sufficient to hold each of them criminally liable for the offences committed by the other members, unless there is sufficient evidence on record to show that one such member also intends to or knows the likelihood of commission of such an offending act.^{187.}

[s 34.5] **Three leading Cases.—**

The case of *Barendra Kumar Ghosh v King Emperor*,^{188.} is a *locus classicus* and has been followed by number of High Courts and the Supreme Court in a large number of cases. In this case, the Judicial Committee dealt with the scope of section 34 dealing with the acts done in furtherance of the common intention, making all equally liable for the results of all the acts of others. It was observed that section 34 when it speaks of a [criminal act](#) done by several persons in furtherance of the common intention of all, has regard not to the offence as a whole, but to the [criminal act](#), that is to say, the totality of the series of acts which result in the offence. In the case of a person assaulted by many accused, the [criminal act](#) is the offence which finally results, though the achievement of that [criminal act](#) may be the result of the action of several persons.

In another celebrated case *Mehbub Shah v King-Emperor*,^{189.} the court held that:

Section 34 lays down a principle of joint liability in the doing of a [criminal act](#). The section does not say "the common intentions of all," nor does it say "an intention common to all." Under the section, the essence of that 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. To invoke the aid of s.34 successfully, it must be shown that the [criminal act](#) complained against was done by one of the accused persons in the furtherance of the common intention of all; if this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section 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.

Approving the judgments of the Privy Council in *Barendra Kumar Ghosh* (*Barendra Kumar Ghosh v King Emperor*,^{190.} and *Mahbub Shah* cases¹⁹¹ a three-Judge Bench of Supreme Court in *Pandurang v State of Hyderabad*,^{192.} 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 pre-arranged 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. The Court had in mind the ultimate act done in furtherance of the common intention

[s 34.6] **Common intention and *mens rea*.—**

Under section 34, every individual offender is associated with the [criminal act](#) which constitutes the offence both physically as well as mentally i.e. he is a participant not only in what has been described as a common act but also what is termed as the common intention and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different. But referring to the common intention, it needs to be clarified that the courts must keep in mind the fine distinction between "common intention" on the one hand and *mens rea* as understood in criminal jurisprudence on the other. Common intention is not alike or identical to *mens rea*. The latter may be coincidental with or collateral to the former but they are distinct and different.^{193.}

[s 34.7] **Participation.—**

Participation of several persons in some action with the common intention of committing a crime is an essential ingredient; once such participation is established, section 34 is at once attracted.^{194.} Thus, 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.^{195.} The Supreme Court has held that it is the essence of the section that the person must be physically present at the actual commission of the crime. He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape, but he must be physically present at the scene of the occurrence and must actually participate in the commission of the offence in some way or other at the time crime is actually being committed.^{196.}

The Supreme Court has emphasised that proof of participation by acceptable evidence may in circumstances be a clue to the common intention and that it would not be fatal to the prosecution case that the culprits had no community of interests.^{197.}

Sometimes, however, absence of actual participation may serve an important purpose as it happened, for example, where in a love triangle the paramour killed the woman's husband and she remained sitting with the dead body inside the house without opening the door. The main accused having been acquitted, the Supreme Court held that the woman alone could not be convicted under section 302 read with section 34 particularly in view of the fact that the nature of the injuries (*gandasa* blows with a heavy hand) made it explicit that they were the handiwork of masculine power and not that of feminine hands.^{198.} It is also necessary to remember that mere presence of the offender at the scene of murder without any participation to facilitate the offence is not enough.^{199.} By merely accompanying the accused one does not become liable for the crime committed by the accused within the meaning of [section 34, IPC, 1860](#).^{200.} The degree of participation is also an important factor.^{201.} The court restated the two ingredients for application of the section which are:

- (i) common intention to commit a crime, and
- (ii) participation by all the accused in the act or acts in furtherance of the common intention. These two things establish their joint liability.^{202.}

Where one of the accused persons focussed light on the victim with a torch so as to enable others to assault him, otherwise it is a dark night. The court said that his conduct prior and subsequent to the occurrence clearly showed that he shared the common intention so far as the assault on the deceased was concerned. Hence, he was rightly roped in under section 34.^{203.} If participation is proved and common intention is absent, section 34 cannot be invoked.^{204.} The co-accused was standing outside the house, where the incident took place, while the others committed the

murder. There is no evidence of his having played any part in the crime. He did not even act as a guard; he did not prevent the witness from entering the house. There is no evidence of the formation or sharing of any common intention with the other accused. No weapon was seized from him, nor was any property connected with the crime, confiscated from him. It was therefore, held that, it was not safe to convict the co-accused of the offence of murder with the aid of sub-sections 34 and 120(B).²⁰⁵.

[s 34.8] Physical Presence not *sine qua non*.—

Physical presence at the very spot is not always a necessary ingredient to attract the action. The Supreme Court decision in *Shreekantiah Ramayya v State of Bombay*,²⁰⁶ is the authority for the aforesaid proposition. Vivian Bose, J, speaking for the Bench of three Judges stated thus:

He need not be present in the actual room; he can, for instance, stand guard by a gate outside ready to warn his companions about any approach of danger or wait in a car on a nearby road ready to facilitate their escape.

What is required is his actual participation in the commission of the offence in some way or other at the time when the crime is actually being committed. The participation need not in all cases be by physical presence. In offence involving physical violence, normally presence at the scene of offence may be necessary, but such is not the case in respect of other offences when the offence consists of diverse acts which may be done at different times and places. The physical presence at the scene of offence of the offender sought to be rendered liable under this section is not one of the conditions of its applicability in every case.²⁰⁷ Even the concept of presence of the co-accused at the scene is not a necessary requirement to attract [section 34 of the IPC, 1860](#), e.g., the co-accused can remain a little away and supply weapons to the participating accused either by throwing or by catapulting them so that the participating accused can inflict injuries on the targeted person. There may be other provisions in the [IPC, 1860](#) like sub-sections 120B or 109 which could be invoked then to catch such non-participating accused. Thus, participation in the crime in furtherance of the common intention is *sine qua non* for [section 34 IPC, 1860](#). Exhortation to other accused, even guarding the scene etc. would amount to participation. Of course, when the allegation against an accused is that he participated in the crime by oral exhortation or by guarding the scene the court has to evaluate the evidence very carefully for deciding whether that person had really done any such act.²⁰⁸

The absence of any overt act of assault, exhortation or possession of weapon cannot be singularly determinative of absence of common intention.²⁰⁹

[s 34.9] In furtherance of common intention.—

The Supreme Court referred to the Oxford English Dictionary where the word "furtherance" is defined as an "action of helping forward." Russell, in his book on Criminal Law adopted this definition and said:

It indicates some kind of aid or assistance proceeding an effect in future and 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 the felony." The Supreme Court has also construed the word "furtherance" as "advancement or promotion."²¹⁰

1. 'Common intention'.—The phrase 'common intention' means a pre-oriented plan and acting in pursuance to the plan. The common intention to give effect to a particular act may even develop at the spur of moment between a number of persons with reference to the facts of a given case.²¹¹ In *Amrik Singh's* case it has further been held that though common intention may develop in course of the fight but there must be clear and unimpeachable evidence to justify that inference.²¹² Before a Court can convict a person for any offence read with section 34, it should come to a definite conclusion

that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence.²¹³ Where the act of murder by the main accused was facilitated by two others by catching hold of the victim but without knowing nor having the intention of causing death, it was held that the only common intention that could be inferred was that of causing grievous hurt.²¹⁴ Where the accused had inflicted *lathi* blows causing injuries only on the eyewitness and not on the deceased, he could not be said to have shared the common intention of committing murder of the deceased. He was acquitted for the charge of murder and was convicted under section 325.²¹⁵

Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them.²¹⁶

What to speak of similar intention even same intention without sharing each other's intention is not enough for this section.²¹⁷ In a case like this each will be liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others.²¹⁸ In fine, if common intention cannot be inferred from the evidence of facts and circumstances of the case, [section 34, IPC, 1860](#), cannot be invoked.²¹⁹ A party of farmers was cutting their crop. The deceased took away a portion of the harvested crop. That night when he was returning from a *barat* 16 persons waited for him on the way. They came towards him and the convict who was carrying a knife gave him a stab wound on the neck which proved fatal. The others did not know that he had a knife and all of them being with bare hands, it could not be said that they had the common intention of causing death. They could as well have thought that after surrounding the accused he would be called upon to return or pay for the harvest taken away by him.²²⁰ A person gifted his land to one of his grandsons. His other son along with his wife fully armed, the man with a *lathi* and the woman with a *gandasa* came to protest. The man lost control and both grandson and his father intervened to save the situation but they received *lathi* blows and died. The woman struck only her brother-in-law with the *gandasa* causing a non-fatal injury. Her husband was convicted for murder but her punishment was reduced to causing grievous hurt because it appeared that the whole thing was a spot happening and not a planned affair.²²¹

Where the genesis of the verbal wrangle between the neighbours was not known, but it appeared to have arisen suddenly, there being no chance for common intention to be formulated, each attacker was held to be punishable for his individual acts.²²²

Where common intention was established the mere fact that one of the culprits distanced himself from the scene could not absolve him from liability.²²³

It is not necessary for bringing a case within the scope of section 34 to find as to who in fact inflicted the fatal blow. A conviction under the section read with the relevant substantive provision can be made when the ingredients required by the section are satisfied and it is not necessary to mention the section number in the judgment.²²⁴ Death of two persons was caused by unprovoked firing by appellants who are police officials and grievous gunshot injuries to another person. It was not necessary to assign a specific role to each individual appellant as the firing at the Car was undoubtedly with a clear intent to annihilate those in it and was resorted to in furtherance of common intention of all the appellants. The accused were liable to conviction under [section 302/34 IPC, 1860](#).²²⁵ The acts of all the accused need not be the same or identically similar. All that is necessary is that they all must be actuated by the one and the same common intention. The fact that two of them caused injuries at the back of their victim and the injury at the head which proved to be fatal was caused

by the third person, the two co-accused could not claim to be absolved of liability for murder.^{226.}

It is not necessary for bringing about the conviction of the co-accused to show that he also committed an *overt act* for the achievement of their object. The absence of any overt act or possession of weapon cannot be singularly determinative of absence of common intention. If common intention by meeting of minds is established in the facts and circumstances of the case there need not be an overt act or possession of weapon required, to establish common intention.^{227.}

The accused caught hold of the victim and exhorted the main accused to strike him. On such exhortation the main accused inflicted a *Kirpan* wound. The victim died. It was held that the instigation was only to strike. It could not be said that the accused shared the intention of the main accused to kill. The conviction was altered from under sections 202/34 to one under section 324.^{228.} The victim woman was murdered by her father-in-law and brother-in-law. The third person helped them to conceal the dead body to screen them. The conviction of the two accused for murder was upheld but that of the third one only for concealment of evidence under sections 201/34.^{229.}

[s 34.10] **Common Intention: How Proved.—**

The common intention can be inferred from the circumstances of the case and that the intention can be gathered from the circumstances as they arise even during an incident.^{230.} Common intention is a state of mind. It is not possible to read a person's mind. There can hardly be direct evidence of common intention. The existence or non-existence of a common intention amongst the accused has to be deciphered cumulatively from their conduct and behaviour in the facts and circumstances of each case. Events prior to the occurrence as also after, and during the occurrence, are all relevant to deduce if there existed any common intention. There can be no straight jacket formula.^{231.} The Court has to examine the prosecution evidence in regard to application of section 34 cumulatively and if the ingredients are satisfied, the consequences must follow. It is difficult to state any hard and fast rule which can be applied universally to all cases. It will always depend on the facts and circumstances of the given case whether the person involved in the commission of the crime with a common intention can be held guilty of the main offence committed by them together.^{232.} Courts, in most cases, have to infer the intention from the act(s) or conduct of the accused or other relevant circumstances of the case. However, an inference as to the common intention shall not be readily drawn; the criminal liability can arise only when such inference can be drawn with a certain degree of assurance.^{233.} In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.^{234.} This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance all of them left the scene of the incident together and other acts which all or some may have done as would help in determining the common intention. In other words, the totality of the circumstances must be taken into consideration in arriving at the conclusion whether the accused had a common intention to commit an offence of which they could be convicted.^{235.} Manner of attack shows the common intention of accused.^{236.} The Supreme Court has reiterated:

We reiterate that for common intention, there could rarely be direct evidence. The ultimate decision, at any rate would invariably depend upon the inference deducible from the circumstances of each case. It is settled law that the common intention or the intention of the individuals concerned in furtherance of the common intention could be proved either

from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties.^{237.}

[s 34.11] Complaint.—

In order to attract [section 34 of the IPC, 1860](#), the complaint must, *prima facie*, reflect a common prior concert or planning amongst all the accused.^{238.}

[s 34.12] Effect of no charge under section 34.—

Even if section 34 has not been included in a charge framed for the offence under [section 302 IPC, 1860](#) against the accused, a conviction for the offence under section 302 with the aid of section 34 is not bad as no prejudice would be caused to him.^{239.} Where the appellants caused injuries not enough to cause the death but the same were caused by another, in the absence of a charge under section 34, they were found to be guilty under [section 326 of IPC, 1860](#).^{240.}

[Sections 34, 114 and 149](#) of the [IPC, 1860](#) provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by five Judge [Constitution Bench](#) of in *Willie Slavey v The State of MP*,^{241.} the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.^{242.} But before a court can convict a person under section 302, read with section 34, of the [Indian Penal Code](#), it should come to a definite conclusion that the said person had a prior concert with one or more other persons, named or unnamed, for committing the said offence. A few illustrations will bring out the impact of section 34 on different situations.

(1) A, B, C and D are charged under section 302, read with section 34, of the [Indian Penal Code](#), for committing the murder of E. The evidence is directed to establish that the said four persons have taken part in the murder.

(2) A, B, C and D and unnamed others are charged under the said sections. But evidence is adduced to prove that the said persons, along with others, named or unnamed, participated jointly in the commission of that offence.

(3) A, B, C and D are charged under the said sections. But the evidence is directed to prove that A, B, C and D, along with 3 others, have jointly committed the offence. As regards the third illustration, a Court is certainly entitled to come to the conclusion that one of the named accused is guilty of murder under section 302, read with section 34, of the [Indian Penal Code](#), though the other three named accused are acquitted, if it accepts the evidence that the said accused acted in concert along with persons, named or unnamed, other than those acquitted, in the commission of the offence. In the second illustration the Court can come to the same conclusion and convict one of the named accused if it is satisfied that no prejudice has been caused to the accused by the defect in the charge. But in the first illustration the Court certainly can convict two or more of the named accused if it accepts the evidence that they acted conjointly in committing the offence. But what is the position if the Court acquits 3 of the 4 accused either because it rejects the prosecution evidence or because it gives the benefit of doubt to the said accused? Can it hold, in the absence of a charge as well as evidence, that though the three accused are acquitted, some other unidentified persons acted conjointly along with one of the named persons? If the Court could do so, it would be making out a new case for the prosecution: it would be deciding contrary to the evidence adduced in the case. A Court cannot obviously make out a case for the prosecution which is not disclosed either in the charge or in regard to which there is no basis in the evidence. There must be some foundation in the evidence that persons other than those named have taken part in the commission of the offence and if there