

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

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.<sup>224.</sup> 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](#).<sup>225.</sup> 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.<sup>226.</sup>

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.<sup>227.</sup>

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.<sup>228.</sup> 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.<sup>229.</sup>

### **[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.<sup>230.</sup> 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.<sup>231.</sup> 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.<sup>232.</sup> 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.<sup>233</sup> In most cases it has to be inferred from the act or conduct or other relevant circumstances of the case in hand.<sup>234</sup> 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.<sup>235</sup> Manner of attack shows the common intention of accused.<sup>236</sup> 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.<sup>237</sup>

#### **[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.<sup>238</sup>

#### **[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.<sup>239</sup> 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](#).<sup>240</sup>

[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*,<sup>241</sup> 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.<sup>242</sup> 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 is such a basis the case will be covered by the third illustration.<sup>243</sup> Absence of charge under section 34 is not fatal by itself unless prejudice to the accused is shown.<sup>244</sup>

### **[s 34.13] Alternative Charge.—**

The trial Court framed charges under sections 302/307 r/w 120B [IPC, 1860](#) and an alternative charge under sections 302/307 r/w [section 34 IPC, 1860](#) without opining on the alternative charge, convicted the accused under sections 302/307 r/w 120B. The contention that accused is deemed to be acquitted for charges under sections 302/307/34 [IPC, 1860](#) of the charge of common intention of committing murder and there was no appeal by the State against the deemed acquittal against that charge, it was not open to the High Court to alter or modify the conviction under sections 302/307/34 [IPC, 1860](#), repelled by holding that charges had indeed been framed in the alternative and for cognate offences having similar ingredients as the main allegation of murder.<sup>245</sup>

### **[s 34.14] Distinction between sections 34 and 149, IPC, 1860.—**

Though both these sections relate to the doctrine of vicarious liability and sometimes overlap each other there are substantial points of difference between the two. They are as under:—

- (i) Section 34 does not by itself create any specific offence, whereas [section 149, IPC, 1860](#), does so (see discussion under sub-para "principle" ante).
- (ii) Some active participation, especially in a crime involving physical violence is necessary under section 34 but [section 149, IPC, 1860](#), does not require it and the liability arises by reason of mere membership of the unlawful assembly with a common object and there may be no active participation at all in the preparation and commission of the crime.
- (iii) Section 34 speaks of common intention but [section 149, IPC, 1860](#),

contemplates common object which is undoubtedly wider in its scope and amplitude than intention. If the offence committed by a member of an unlawful assembly is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of the common object, all other members of the unlawful assembly would be guilty of that offence under [section 149, IPC, 1860](#), although they may not have intended to do it or participated in the actual commission of that offence.<sup>246.</sup>

- (iv) Section 34 does not fix a minimum number of persons who must share the common intention, whereas [section 149, IPC, 1860](#), requires that there must be at least five persons who must have the same common object (see also discussion under sub-head "Sections 34 and 149" under [section 149, IPC, 1860, infra](#)).<sup>247.</sup>

### **[s 34.15] Effect of conviction or acquittal of one or more or others.—**

Several persons involved in a criminal adventure may be guilty of different offences depending upon their respective acts. If the act is done in furtherance of their common intention, all of them become equally liable for the act. Similarly, if they are members of an unlawful assembly, an act done by any one in prosecution of the common object or any act which the members knew could happen in such prosecution, every member would be liable for the act. If any one of them happens to be wrongly acquitted and no appeal has been filed against it, it would not *ipso facto* impede the conviction of others. Likewise, the conviction of any one or more of them does not automatically result in the conviction of others.<sup>248.</sup>

### **[s 34.16] Substitution of conviction from section 149 to section 34.—**

Following some earlier rulings,<sup>249.</sup> the Supreme Court has stated the law in the following terms:<sup>250.</sup>

It is true that there was no charge under s. 302 read with s. 34... but the facts of the case are such that the accused could have been charged alternatively either under s. 302 read with s. 149 or under s. 302 read with s. 34 and one of the accused having been acquitted, the conviction under s. 302/149 can be substituted with one under s. 302/34. No prejudice is likely to be caused to the accused whose appeal is being dismissed.<sup>251.</sup>

### **[s 34.17] Robbery.—**

Provision under section 397 inevitably negates the use of the principles of constructive or vicarious liability engrafted under section 34. The sentence for offence under [section 397 of the IPC, 1860](#) cannot be awarded to those of the members of the group of dacoits who did not use any deadly weapon. A plain reading of [section 397 of the IPC, 1860](#) would make it clear that such guilt can be attributed only to that offender who uses any deadly weapon or causes grievous hurt to any person during course of the commission of the robbery. The provision postulates that only the individual act of accused will be relevant to attract [section 397 of the IPC, 1860](#).<sup>252.</sup> In a sudden quarrel over payment, person sitting inside the car pulled the petrol pump attendant into the car and drove away. The occupants of the car escaped punishment. It was held that the driver alone could not be held guilty of the offence of robbery and abduction with the aid of section 34.<sup>253.</sup> In a serial highway robbery and murder in which same persons

were involved, it was found as a fact that the self-same two persons were seen by a witness together in a different town before the occurrence. One of their victims survived and he also testified that he saw both of them together. Both of them were held to be guilty of successive crimes and convicted for murder with the aid of section 34 without any need of knowing who played what part.<sup>254.</sup>

#### **[s 34.18] Mob action.—**

A mob of 200 persons armed with different weapons came to the field with the object of preventing the prosecution party from carrying on transplantation operations. Some of them caused death of a person at the spur of the moment for some spot reason. The whole mob could not be convicted for it.<sup>255</sup> A mob chased the members of the rival community up to their locality. A part of the mob started burning their houses and the other part kept on chasing and caused deaths. The court said that the two parts of the mob could not be said to have shared the intention of burning or causing death.<sup>256.</sup>

#### **[s 34.19] Misappropriation.—**

Where the accused the Sarpanch and Secretary of a Gram Panchayat misappropriated the funds of the Panchayat and the circumstances and evidence showed patent dishonest intention on the part of the accused persons, the conviction and sentence of the accused under section 409/34, was not interfered with.<sup>257.</sup>

#### **[s 34.20] Rape cases.—**

In Gang Rape it is not necessary that the intention should exist from the beginning. It can be developed at the last minute before the commission of the offence.<sup>258.</sup>

#### **[s 34.21] Exhortation.—**

One of the accused exhorted while the other immobilised the deceased and the third accused delivered the fatal injuries. It was held that each one shared a common intention.<sup>259.</sup> Section 34 was held to have been rightly applied where two of the accused persons caught hold of the deceased and on their exhortation the third accused shot him on the right temple resulting in death.<sup>260.</sup>

Mere exhortation by one of the accused persons saying that they would not leave the victim till he died was held to be not a basis for roping into the common intention of the others.<sup>261.</sup> The only allegation against the appellant was her exhortation. Enmity between the family of the deceased and that of the accused proved. In such a situation, where the eye witnesses have not narrated any specific role carried by the appellant, rather the specific role of assaulting with the sword has been attributed to the co-accused, it cannot be ruled out that the name of the appellant has been added due to enmity with the main accused.<sup>262.</sup>

#### **[s 34.22] Pre-conceived common intention.—**

Only when a court with some certainty holds that a particular accused must have pre-conceived or pre-meditated the result which ensued or acted in concert with others in order to bring about that result, that section 34 may be applied.<sup>263</sup>

### **[s 34.23] Common intention and private defence.—**

If two or more persons had common intention to commit murder and they had participated in the acts done by them in furtherance of that common intention, all of them would be guilty of murder. [Section 96 IPC, 1860](#) says that nothing is an offence which is done in the exercise of the right of private defence. Though all the accused would be liable for committing the murder of a person by doing an act or acts in furtherance of the common intention, they would not be liable for the act or acts if they had the right of private defence to voluntarily cause death of that person. Common intention, therefore, has relevance only to the offence and not to the right of private defence. What would be an offence by reason of constructive liability would cease to be one if the act constituting the offence was done in exercise of the right of private defence.

If the voluntary causing of death is not permissible under the right of private defence under section 96, then the common intention in regard thereto will lead to the result that the accused persons must be held guilty by reason of constructive liability under the relevant section (in this case section 304 Part I [IPC, 1860](#)). If, however, the common intention was only to commit an act which was permissible within the confines of s. 96 read with s. 98, then constructive liability under section 34 cannot be said to have been accrued to the accused. If the right of private defence was exceeded by some persons, the guilt of each of the accused proved to have exceeded the right of private defence would have to be dealt with separately. The instant case came under the former situation, and hence, such persons were guilty under section 304, Part I [IPC, 1860](#). They, therefore, must be held to have had a common object for causing death of *P*. They were sentenced to undergo ten years' rigorous imprisonment each.<sup>264</sup>

<sup>170</sup>. Subs. by Act 27 of 1870, section 1, for section 34.

<sup>171</sup>. *Goudappa v State of Karnataka*, (2013) 3 SCC 675 [LNIND 2013 SC 177] ; *Satyavir Singh Rathie v State Thr. CBI*, AIR 2011SC 1748 : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ. 2908 ; *Abdul Sayeed v State of MP*, 2010 (10) SCC 259 [LNIND 2010 SC 872] : 2010(9) Scale 379 : (2010) 3 SCC (Cr) 1262.

<sup>172</sup>. *Kuria v State of Rajasthan*, AIR 2013 SC 1085 [LNIND 2012 SC 678] : (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC).

<sup>173</sup>. *Queen v Gora Chand Gope*, (1866) 5 South WR (Cr) 45.

<sup>174</sup>. *Ashok Kumar v State of Punjab*, AIR 1977 SC 109 : (1977)1 SCC 746 .

<sup>175</sup>. *Babulal Bhagwan Khandare v State Of Maharashtra* AIR 2005 SC 1460 [LNIND 2004 SC 1203] : (2005) 10 SCC 404 [LNIND 2004 SC 1203] .

<sup>176</sup>. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .

<sup>177</sup>. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

178. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
179. *Garib Singh v State of Punjab*, 1972 Cr LJ 1286 : AIR 1973 SC 460 [LNIND 1972 SC 187] .  
See also *Yogendra v State of Bihar*, 1984 Cr LJ 386 (SC).
180. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] relied in *Thoti Manohar v State of AP*, 2012, (7) Scale 215 : (2012) 7 SCC 723 [LNIND 2012 SC 365] : 2012 Cr LJ 3492 ; see also *Amar Singh v State of Haryana*, 1973 Cr LJ 1409 : AIR 1973 SC 2221 ; *Dharam Pal v State of UP*, 1975 Cr LJ 1666 : AIR 1975 SC 1917 [LNIND 1975 SC 314] ; *Amir Hussain v State of UP*, 1975 Cr LJ 1874 : AIR 1975 SC 2211 *State of Rajasthan v Arjun Singh*, (2011) 9 SCC 115 [LNIND 2011 SC 855] : AIR 2011 SC 3380 [LNIND 2011 SC 855] .
181. *BN Srikantiah v State of Mysore*, AIR 1958 SC 672 [LNIND 1958 SC 49] : 1958 Cr LJ 1251 .
182. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
183. *Killer Thiayagu v. State*, AIR 2017 SC 612 [LNINDORD 2017 SC 1134] .
184. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] ; *Baldeo Singh v State of Bihar*, AIR 1972 SC 464 : 1972 Cr LJ 262 ; *Rana Pratap v State of Haryana*, AIR 1983 SC 680 [LNIND 1983 SC 157] : 1983 Cr LJ 1272 : (1983) 3 SCC 327 [LNIND 1983 SC 157] ,
185. *Syed Yousuf Hussain v State of AP*, AIR 2013 SC 1677 [LNIND 2013 SC 275] : 2013 Cr LJ 2172 : 2013 (5) Scale 346 [LNIND 2013 SC 275] , (2013) 4 SCC 517 [LNIND 2013 SC 275] ; *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] ; *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .
186. *Sudip Kr. Sen v State of WB*, AIR 2016 SC 310 [LNIND 2016 SC 10] : 2016 Cr LJ 1121 .
187. *Nagesar v State of Chhatisgarh*, 2014 Cr LJ 2948 .
188. *Barendra Kumar Ghosh v King Emperor*, AIR 1925 PC 1 [LNIND 1924 BOM 206] .
189. *Mehbub Shah v King-Emperor*, AIR 1945 PC 148 .
190. *Supra*. 191. *Supra*.
192. *Pandurang v State of Hyderabad*, AIR 1955 SC 216 [LNIND 1954 SC 171] : 1955 Cr LJ 572 .
193. *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] *NandKishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
194. *Vijendra Singh v State of UP*, AIR 2017 SC 860 [LNIND 2017 SC 16] ; *Bharwad Mepa Dana v State of Bombay*, AIR 1960 SC 289.
195. *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 .
196. *Shreekantiah Ramayya*, (1954) 57 Bom LR 632 (SC); *Shiv Prasad*, AIR 1965 SC 264 [LNIND 1964 SC 51] : (1965) 1 Cr LJ 249 .
197. *Baba Lodhi v State of UP*, (1987) 2 SCC 352 : AIR 1987 SC 1268 : 1987 Cr LJ 1119 ; *MA AbdullaKunhi v State of Kerala*, AIR 1991 SC 452 [LNIND 1991 SC 24] : 1991 Cr LJ 525 : (1991) 2 SCC 225 [LNIND 1991 SC 24] ; *Noor v State of Karnataka*, (2007) 12 SCC 84 [LNIND 2007 SC 639] : (2008) 2 SCC Cr 221 : 2007 Cr LJ 4299 .
198. *Tara Devi v State of UP*, (1990) 4 SCC 144 : AIR 1991 SC 342 . See also *Hem Raj v State Delhi Admn.*, 1990 Cr LJ 2665 : 1990 Supp SCC 291 : AIR 1990 SC 2252 , one of the accused alone proved to have given the fatal blow, the participation of others not proved, others not convicted under section 302/34.
199. *Bishan Singh v State of Punjab*, 1983 Cr LJ 973 : AIR 1983 SC 748 : 1983 Cr LJ (SC) 327 : 1983 SCC (Cr) 578; *Ghanshyam v State of UP*, 1983 Cr LJ 439 (SC) : AIR 1983 SC 293 : (1982) 2



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200. *Dasrathlal v State of Gujarat*, 1979 Cr LJ 1078 (SC) : AIR 1979 SC 1342 . See further *Rangaswami v State of TN*, AIR 1989 SC 1137 : 1989 Cr LJ 875 : 1989 SCC (Cr) 617 : 1989 Supp (1) SCC 686 . *Gulshan v State of Punjab*, 1989 Cr LJ 120 : AIR 1988 SC 2110 : 1990 Supp SCC 682 .

201. *Jarnail Singh v State of Punjab*, (1996) 1 SCC 527 [LNIND 1995 SC 1172] : AIR 1996 SC 755 [LNIND 1995 SC 1172] : 1996 Cr LJ 1139 .

202. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd* (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 ; *Chandrakant Murgayappa Umrani v State of Maharashtra*, 1998 SCC (Cr) 698; *Hamlet @ Sasi. v State of Kerala*, (2003) 10 SCC 108 [LNIND 2003 SC 688] ; *Surendra Chauhan v State of MP*, (2000) 4 SCC 110 [LNIND 2000 SC 515] : AIR 2000 SC 1436 [LNIND 2000 SC 515] ; *Ramjee Rai v State of Bihar*, (2006) 13 SCC 229 [LNIND 2006 SC 647] : 2006 Cr LJ 4630 ; *Prakash v State of MP*, (2006) 13 SCC 508 [LNIND 2006 SC 1071] : 2007 Cr LJ 798 ; *Sham Shankar Kankaria v State of Maharashtra*, (2006) 13 SCC 165 [LNIND 2006 SC 684] ; *Manik Das v State of Assam*, (2007) 11 SCC 403 [LNIND 2007 SC 769] : AIR 2007 SC 2274 [LNIND 2007 SC 769] , participation proved.

203. *Chacko v State of Kerala*, (2004) 12 SCC 269 [LNIND 2004 SC 86] : AIR 2004 SC 2688 [LNIND 2004 SC 86] ; *Abdul Wahid v State of Rajasthan*, (2004) 11 SCC 241 [LNIND 2004 SC 1454] : AIR 2004 SC 3211 [LNIND 2004 SC 1454] : 2004 Cr LJ 2850 ; *Janak Singh v State of UP*, (2004) 11 SCC 385 [LNIND 2004 SC 515] : AIR 2004 SC 2495 [LNIND 2004 SC 515] : 2004 Cr LJ 2533 ; *Parsuram Pandey v State of Bihar*, 2005 SCC (Cr) 113 : AIR 2004 SC 5068 [LNIND 2004 SC 1075] .

204. *Suresh Sakharam Nangare v State of Maharashtra*, 2012 (9) Scale 245 [LNIND 2012 SC 574] : (2012) 9 SCC 249 [LNIND 2012 SC 574] .

205. *Raju v State of Chhatisgarh*, 2014 Cr LJ 4425 .

206. *Shreekantiah Ramayya v State of Bombay*, AIR 1955 SC 287 [LNIND 1954 SC 180] : 1955 SCR (1) 1177 .

207. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 ; *Virendra Singh v State of MP*, (2010) 8 SCC 407 [LNIND 2010 SC 723] : (2010) 3 SCC (Cr) 893 : 2011 Cr LJ 952 ; *Jaikrishnadas Desai*, (1960) 3 SCR 319 [LNIND 1960 SC 79] : AIR 1960 SC 889 [LNIND 1960 SC 79] : 1960 Cr LJ 1250 ; *Dani Singh v State of Bihar*, AIR 2004 SC 4570 [LNIND 2004 SC 1490] : (2004) 13 SCC 203 [LNIND 2004 SC 1490] .

208. *Suresh v State of UP*, 2001 (3) SCC 673 [LNIND 2001 SC 623] : AIR 2001 SC 1344 [LNIND 2001 SC 623] ; *Ramaswami Ayyangar v State of TN*, AIR 1976 SC 2027 [LNIND 1976 SC 128] : 1976 Cr LJ 1536 (the presence of those who in one way or the other facilitate the execution of the common design itself tantamounts to actual participation in the "criminal act").

209. *Rajkishore Purohit v State of Madhya Pradesh*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

210. *Parasa Raja Manikyala Rao v State of AP*, (2003) 12 SC 306 : AIR 2004 SC 132 [LNIND 2003 SC 888] : 2004 Cr LJ 390 , citing *Shankarlal Kacharabhai*, AIR 1965 SC 1260 [LNIND 1964 SC 230] : 1965 (2) Cr LJ 226 .

211. *Dharnidhar v State of UP*, (2010) 7 SCC 759 [LNIND 2010 SC 584] : 2010 (7) Scale 12 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] .

212. *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC) : (1972) 4 SCC (N) 42 (SC).

213. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1964 (1) SCR 678 [LNIND 1963 SC 12] : 1963 Cr LJ 351 (SC); *State of Maharashtra v Jagmohan Singh Kuldip Singh Anand*, (2004) 7 SCC 659 [LNIND 2004 SC 862] : AIR 2004 SC 4412 [LNIND 2004 SC 862] , the prosecution is not required to prove in every case a pre-arranged plan or prior concert.



*Preetam Singh v State of Rajasthan*, (2003) 12 SCC 594 , prior concert can be inferred, common intention can develop on the spot.

214. *Harbans Nonia v State of Bihar*, AIR 1992 SC 125 : 1992 Cr LJ 105 .

215. *Dharam Pal v State of UP*, AIR 1995 SC 1988 [LNIND 1995 SC 198] : 1995 Cr LJ 3642 .

216. *Hanuman Prasad v State of Rajasthan*, (2009) 1 SCC 507 [LNIND 2008 SC 2256] : (2009) 1 SCC Cr 564, the Supreme Court distinguishes common intention from similar intention and also explains the meaning and applicability of the expression.

217. *Dajya Moshaya Bhil v State of Maharashtra*, 1984 Cr LJ 1728 : AIR 1984 SC 1717 : 1984 Supp SCC 373 . The Supreme Court applied the distinction between common intention and similar intention in *State of UP v Rohan Singh*, (1996) Cr LJ 2884 (SC) : AIR 1996 SCW 2612 . In *Mohan Singh v State of Punjab*, AIR 1963 SC 174 [LNIND 1962 SC 118] it was held that persons having similar intention which is not the result of pre-concerted plan cannot be held guilty for the "criminal act" with the aid of Section 34.

218. *Parichhat v State of MP*, 1972 Cr LJ 322 : AIR 1972 SC 535 ; *Amrik Singh v State of Punjab*, 1972 Cr LJ 465 (SC). **Followed** in *Khem Karan v State of UP*, 1991 Cr LJ 2138 All where each accused hit differently at the behest of one of them, hence, no common intention.

219. *Mitter Sen v State of UP*, 1976 Cr LJ 857 : AIR 1976 SC 1156 ; see also *Gajjan Singh v State of Punjab*, 1976 Cr LJ 1640 : AIR 1976 SC 2069 [LNIND 1976 SC 72] ; *Jarnail Singh v State of Punjab*, 1982 Cr LJ 386 : AIR 1982 SC 70 (SC).

220. *Rambilas Singh v State of Bihar*, AIR 1989 SC 1593 [LNIND 1989 SC 216] : (1989) 3 SCC 605 [LNIND 1989 SC 216] : 1989 Cr LJ 1782 . The conviction under sub-sections 34/149 and 34/302 was set aside.

221. *Tripta v State of Haryana*, AIR 1992 SC 948 : 1992 Cr LJ 3944 . See also *Major Singh v State of Punjab*, AIR 2003 SC 342 [LNIND 2002 SC 742] : 2003 Cr LJ 473 : (2002) 10 SCC 60 [LNIND 2002 SC 742] ; *Balram Singh v State of Punjab*, AIR 2003 SC 2213 [LNIND 2003 SC 514] : (2003) SCC 286 .

222. *Devaramani v State of Karnataka*, (1995) 2 Cr LJ 1534 SC. See also *Gopi Nath v State of UP*, AIR 2001 SC 2493 : 2001 Cr LJ 3514 ; *Pal Singh v State of Punjab*, AIR 1999 SC 2548 [LNIND 1999 SC 604] : 1999 Cr LJ 3962 ; *Prem v Daula*, AIR 1997 SC 715 [LNIND 1997 SC 64] : 1997 Cr LJ 838 ; *Muni Singh v State of Bihar*, AIR 2002 SC 3640 ; *Mahesh Mahto v State of Bihar*, AIR 1997 SC 3567 [LNIND 1997 SC 1103] : 1997 Cr LJ 4402 .

223. *Lallan Rai v State of Bihar*, AIR 2003 SC 333 [LNIND 2002 SC 705] : 2003 Cr LJ 465 : (2003) 1 SCC 268 [LNIND 2002 SC 705] .

224. *Narinder Singh v State of Punjab*, AIR 2000 SC 2212 [LNIND 2000 SC 615] : 2000 Cr LJ 3462 , *Sheelam Ramesh v State of AP*, AIR 2000 SC 118 [LNIND 1999 SC 926] : 2000 Cr LJ 51 ; *State of Haryana v Bhagirath*, AIR 1999 SC 2005 [LNIND 1999 SC 541] : 1999 Cr LJ 2898 ; *Asha v State of Rajasthan*, AIR 1997 SC 2828 [LNIND 1997 SC 844] : 1997 Cr LJ 3561 .

225. *Satyavir Singh Rathie v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .

226. *Krishnan v State*, (2003) 7 SCC 56 [LNIND 2003 SC 587] : AIR 2003 SC 2978 [LNIND 2003 SC 587] : 2003 Cr LJ 3705 .

227. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] .

228. *Ajay Sharma v State of Rajasthan*, AIR 1998 SC 2798 [LNIND 1998 SC 879] : 1998 Cr LJ 4599 . See also *State of Karnataka v Maruthi*, AIR 1997 SC 3797 : 1997 Cr LJ 4407 ; *Bhupinder Singh v State of Haryana*, AIR 1997 SC 642 : 1997 Cr LJ 958 .

229. *State of UP v Balkrishna Das*, AIR 1997 SC 225 [LNIND 1996 SC 1753] : 1997 Cr LJ 73 .

230. *State of AP v M Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).

231. *Rajkishore Purohit v State of MP*, AIR 2017 SC 3588 [LNIND 2017 SC 362] ; *State of AP v M. Sobhan Babu*, 2011 (3) Scale 451 [LNIND 2010 SC 1219] : 2011 Cr LJ 2175 (SC).
232. *Kuria v State of Rajasthan*, (2012) 10 SCC 433 [LNIND 2012 SC 678] : 2012 Cr LJ 4707 (SC); *Hemchand Jha v State of Bihar*, (2008) 11 SCC 303 [LNIND 2008 SC 1299] : (2008) Cr LJ 3203 ; *Shyamal Ghosh v State of WB*, (2012) 7 SCC 646 [LNIND 2012 SC 397] : 2012 Cr LJ 3825 : AIR 2012 SC 3539 [LNIND 2012 SC 397] ; *Nand Kishore v State of MP*, AIR 2011 SC 2775 [LNIND 2011 SC 622] : (2011) 12 SCC 120 [LNIND 2011 SC 622] .
233. *Bengai Mandal v State of Bihar*, AIR 2010 SC 686 [LNIND 2010 SC 39] : (2010) 2 SCC 91 [LNIND 2010 SC 39] .
234. *Maqsoodan v State of UP*, 1983 Cr LJ 218 : AIR 1983 SC 126 [LNIND 1982 SC 199] : (1983) 1 SCC 218 [LNIND 1982 SC 199] ; *Aizaz v State of UP*, (2008) 12 SCC 198 [LNIND 2008 SC 1621] : 2008 Cr LJ 4374 , *Lala Ram v State of Rajasthan*, (2007) 10 SCC 225 [LNIND 2007 SC 803] : (2007) 3 SCC Cr 634, *Harbans Kaur v State of Haryana*, AIR 2005 SC 2989 [LNIND 2005 SC 211] : 2005 Cr LJ 2199 (SC), *Dani Singh v State of Bihar*, 2004 (13) SCC 203 [LNIND 2004 SC 1490] : 2004 Cr LJ 3328 (SC).
235. *Ram Tahal v State of UP*, 1972 Cr LJ 227 : AIR 1972 SC 254 [LNIND 1971 SC 579] ; see also *Nitya Sen v State of WB*, 1978 Cr LJ 481 : AIR 1978 SC 383 ; *Sivam v State of Kerala*, 1978 Cr LJ 1609 : AIR 1978 SC 1529 ; *Jagdeo Singh v State of Maharashtra*, 1981 Cr LJ 166 : AIR 1981 SC 648 (SC); *Aher Pitha Vajshi v State of Gujarat*, 1983 Cr LJ 1049 : AIR 1983 SC 599 [LNIND 1983 SC 98] : 1983 SCC (Cr) 607; *Manju Gupta v MS Paintal*, AIR 1982 SC 1181 [LNIND 1982 DEL 128] : 1982 Cr LJ 1393 : (1982) 2 SCC 412 . Another instance of failed prosecution under the Act is *Harendra Narayan Singh v State of Bihar*, AIR 1991 SC 1842 [LNIND 1991 SC 307] : 1991 Cr LJ 2666 . *Ghana Pradhan v State of Orissa*, AIR 1991 SC 1133 : 1991 Cr LJ 1178 . Common intention not established even when the two accused were striking the same person in their own ways.
236. *Raju @ Rajendra v State of Rajasthan*, 2013 Cr LJ 1248 (SC) : (2013) 2 SCC 233 [LNIND 2013 SC 25] .
237. *Jhinku Nai v State of UP*, AIR 2001 SC 2815 [LNIND 2001 SC 1587] at p. 2817. See also *Jagga Singh v State of Punjab*, (2011) 3 SCC 137 [LNINDORD 2011 SC 288] : AIR 2011 SC 960 [LNINDORD 2011 SC 288] .
238. *Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd*, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
239. *Darbara Singh v State of Punjab*, 2012 (8) Scale 649 [LNIND 2012 SC 545] : (2012) 10 SCC 476 [LNIND 2012 SC 545] ; *Gurpreet Singh v State of Punjab*, AIR 2006 SC 191 [LNIND 2005 SC 887] : (2005) 12 SCC 615 [LNIND 2005 SC 887] .
240. *Vijay Singh v State of MP*, 2014 Cr LJ 2158 .
241. *Willie Slavey v The State of MP*, 1955 (2) SCR 1140 [LNIND 1955 SC 90] at p 1189 : AIR 1956 SC 116 [LNIND 1955 SC 90] .
242. *Santosh Kumari v State of J&K*, (2011) 9 SCC 234 [LNIND 2011 SC 901] : AIR 2011 SC 3402 [LNIND 2011 SC 901] : (2011) 3 SCC (Cr) 657.
243. *Krishna Govind Patil v State of Maharashtra*, AIR 1963 SC 1413 [LNIND 1963 SC 12] : 1963 Cr LJ 351 **relied in** *Chinnam Kameswara Rao v State of AP* 2013 Cr LJ 1540 : JT 2013 (2) SC 398 [LNIND 2013 SC 57] : 2013 (1) Scale 643 [LNIND 2013 SC 57] .
244. *Anil Sharma v State of Jharkhand*, (2004) 5 SCC 679 [LNIND 2004 SC 590] : AIR 2004 SC 2294 [LNIND 2004 SC 590] : 2004 Cr LJ 2527 .
245. *Satyavir Singh Rathie v State Thr. CBI*, AIR 2011 SC 1748 [LNIND 2011 SC 475] : (2011) 6 SCC 1 [LNIND 2011 SC 475] : 2011 Cr LJ 2908 .
246. *Barendra Kumar Ghosh v Emp.*, AIR 1925 PC 1 [LNIND 1924 BOM 206] (7) : 26 Cr LJ 431; *Nanak Chand v State of Punjab*, 1955 Cr LJ 721 (SC); *Anam Pradhan v State*, 1982 Cr LJ 1585