Rama Meru v. State of Gujarat,
1993 Supp (1) SCC 315.

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Sec.34 of the I.P.C. has been construed as a rule of evidence to pin liability on each of those with a common intention for the acts of all of them. The case reviewed here seeks to depart from this rule. This could upset the established jurisprudence in this field, and the authors of this judgment have been either oblivious or reckless as to the consequences of this judgment.

Sec. 34, IPC is a rule of evidence which embodies a principle of joint criminal liability. The essence of this principle was expounded cogently in *Barendra Kumar Ghosh's Case.*[1] The court therein opined that common intention dealt with the doing of separate acts, similar or diverse, by several persons, which if done in the furtherance of a common intention, renders each person liable for the result of them as if he had done them himself. Since 1924, when this case was decided, the law has developed considerably. However this fundamental principle has not been derogated from. Of late the courts have tended to use Sec. 34 more restrictively. The dimensions of the principle as explained in *Barendra Kumar Ghosh's* Case[2] can be better understood with the help of a few simple illustrations.

If, for instance, a group of people plan to rob a bank and the plan includes the involvement of one member, in merely standing outside the bank to warn the others inside of any danger, that would be an act done in furtherance of a common intention and he would be liable as everyone else inside the bank, for the offence.

If one member, contrary to the plan, to wreck his private vengeance, shoots the bank manager, he would be liable for his own act and this act would not be attributed to the rest as no common intention to injure or kill the manager existed.

While the above were merely to illustrate the general principles, a fact situation more pertinent to the instant case would be the following : if a group of people having a grudge against A for some reason decide to kill him and each of them armed with deadly weapons attack him indiscriminately and succeed in killing him, each of them would be liable for A's murder, even if none of the injuries could have resulted individually in death, though collectively they would have.

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* III Year, B.A; LL.B. (H) NLSIU.

1 (1924) 27 Bom.L.R.

2 *Ibid.*

Contrast this with the former example of the bank robbery. If, for example, in a gang of four, one was stationed outside, the other was to make sure all the telephone wires were cut and only two were to actually hold up the teller and loot the money, then, ultimately, all four would be liable for the criminal act done as each act was done in furtherance of the common intention to rob the bank. By the same reasoning, if each person inflicts injuries which could not by themselves have caused death but collectively would have done so, each would be liable for murdering the deceased A. Just as each member is liable for the bank robbery in the second illustration, though he may have done nothing more than stand outside the bank, similarly each member in the group which killed A is liable for A's murder though he may have done no more than administer a few blows to the deceased's body.

As laid down in *Rewaram's* Case[3], a criminal act under the section means the unity of criminal behaviour which results in something for which an individual would be punishable as if it were all done by himself alone.

This is the very essence of sec. 34 and the relevance of the case under review, is that it seeks to derogate from this. In the case under review, the deceased had been an accused in a murder case of which he was acquitted. Incensed by this seven people, including the two appellants, armed with lathis, knives, guns and stones attacked the deceased indiscriminately who died on the spot. The trial court acquitted five of the accused and convicted the appellants on charges under secs. 326/34 IPC. The High Court affirmed the acquittal of five accused but altered the conviction of the appellants to an offence punishable under secs. 302/34 IPC. The case came up on appeal before the Supreme Court which speaking through S. Mohan and G.N. Ray JJ. set aside the order of conviction by the High Court and affirmed the conviction by the sessions Judge under secs. 326/34 IPC.

The judgement of the Supreme Court disclosed precisely two reasons for its order.:-

1) One of the appellants had also suffered injuries which had not been satisfactorily explained by the prosecution. The Court thereby came to the conclusion that initially the appellants may not have intended to inflict any knife injuries though they had knives in their hands, but after the appellant number 1 was injured the appellants had also inflicted knife injuries on the deceased. This reasoning, it is humbly submitted, is questionable. It seems to ignore the principle related to common intention that has evolved over the years, namely, that common intention can develop on the spot[4] it does not necessarily imply an intention that developed prior to the commission of the act itself.[5] This principle has been reiterated and reemphasised in the recent decision of *Hari Om. v. State of Uttar Pradesh.*[6] The Court herein clearly laid down that common intention can

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3 1983 Cri. L.J. 1845 (Bom).
4 *See eg,, Khem Karan v.State of U.P.*, 1991 Cri. L.J. 2138 (All).
5 *See eg., Abdul Bari v. State of W. Bengal*, 1984 Cri L.J. 201 (Cal).
6 1993 Cri. L.J. 1383(SC).

be formed in the course of occurence. Why then has the Court in the instant case neglected to take this into account? An enquiry to ascertain whether a common intention to murder the deceased developed between the appellants during the occurence may have yielded interesting possibilities. Why and how could the Court assume that merely because there may not have been a pre-arranged plan, the appellants in inflicting knife injuries on the accused merely intended to cause grievious hurt and not to cause his death?

If, as the Court has assumed, the appellants did not intend to inflict any knife injuries at first but did so only subsequently, what exactly was the intention which was shared in common up to that point? Was it merely to stand by holding knives? If so, how could the Court be so sure that there was any common intention at all? Could it not be a mere same or similar intention?

None of these aspects has been dealt with by the Court in the case or even been approached or attempted.

2) The second reason given by the court for its decision was that as the doctor had categorically stated that none of the injuries was by themselves likely to cause death but death had occurred because collectively the injuries were sufficient to cause death, it could not be held that the appellants harbored a common intention to murder the deceased.

This reasoning, it is submitted, is even more suspect than the earlier one.

Generally, once a common intention to murder the deceased can be seen then all the members involved in the attack can be charged under secs. 302/34 IPC, even if none of the injuries could individually have resulted in the death. This is an established principle. In *State of Assam v. Siba Prasad Bora*[7], the Court clearly held that intention to cause injuries which would be likely to cause death even *cumulatively* (emphasis added) would be sufficient to attract secs. 302/34 IPC. Even in the recent case of *Amar Singh Bhim Singh Gharia v. State of Gujarat*,[8] where the deceased died of shock and haemorrage resulting from multiple injuries, inflicted by the accused therein indiscriminately, they were convicted under sec. 302/34 IPC.

As it is evident from the above mentioned that where common intention to murder the deceased existed, it matters little that the individual injuries inflicted could not have caused death, the court herein cannot use the nature of individual injuries to determine whether the appellants herein had the requisite common intention to murder the deceased. It would not be a valid criterion for the precise reason that where the participating presence of plurality of the assilants is proved, as has been herein, even if some of the several accused are acquitted the conjoint culpability of the crime is inescapable.[9] The more recent decision of *Appu v. State of Kerala*[10] reiterates the point and

7 1985 Cri.L.J. 43; *see also, Sarwan Singh v. State of Punjab*, AIR 1978 SC 1525.
8 1993 SCC (Cri.) 301.
9 *Thakore v. State of Gujarat*, (1976) 4 SCC 640.
10 1990 Cri. L.J. 36 (Ker.).

held that merely because some of the accused were acquitted for want of evidence, the accused against whom there is legal evidence can be convicted invoking sec. 34 for the offence committed by them all.

What emerges therefore and is relevant for the present discussion is that even though five of the seven accused were acquitted for lack of evidence, the presence of plurality of assailants is undisputed and therefore the two appellants before the Supreme Court, if they are being charged with a criminal act jointly, they are being charged with the act done not individually but collectively, i.e. all seven of them, which resulted in the death of, the deceased. What is left to determine is whether the act done jointly was done with the common intention of murdering the deceased or with the common intention of causing gievious hurt. To determine this, the nature of individual injuries would be irrelevant as at no point is it disputed that whatever was sought to be done was done collectively and with the common intention to do that sought act.

By using the 'individual' nature of injuries to determine the 'common intention' of the appellants the court has derogated from the general principle as embodied in sec. 34, IPC. The Court could have instead *merely* used the plea of lack of evidence to determine any common intention to murder the deceased, as the basis of its order to set aside the conviction by the High Court under sec. 302/34 IPC. Such a course would have achieved the desired result without shaking the basis of an age old principle of joint liability. The Court would be well advised to examine the far reaching consequences of such controversial judgements before passing them and causing confusion confounded in a legal regime which can scarce withstand such onslaught!