
JOINT LIABILITY UNDER INDIAN CRIMINAL LAW

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ABSTRACT

This project analyses joint liability of the persons for the criminal acts committed through several cases decided, comparison with other jurisdictions of the world, analysing the aspect of punishment given in the case of convicted persons under several general and Special Legislations like Indian Penal Code, Immoral Trafficking (prevention) act, Unlawful Activities Prevention Act. This project begins with one of the landmark judgement pronounced in the Indian History of Section 34, analyses Indian Cases and Compares the same with United Kingdom, highlighting several illustrations and principles regarding Section 34 of IPC enunciated in various judgements of the Indian Supreme court and High Courts.

INTRODUCTION AND HISTORY OF SECTION 34 IPC 1860

What is Crime?

Crime Defined as a Procedural Wrong by 1. John Austin “A wrong which is pursued by the Sovereign or his subordinate is a crime (public wrong). A wrong which is pursued at the discretion of the injured party and his representatives is a civil wrong (private wrong).”

Definition by Prof Kenny as A procedural wrong “Crimes are wrongs whose sanction is punitive and is in no way remissible by any private person, but is remissible by the crown alone if remissible at all.”¹

Crime defined as a conventional by Wrong Edwin Sutherland who defines crimes as criminal behavior “in violation of criminal law. No matter what the degree of immorality, reprehensibility, or indecency of an act, it is not a crime unless it is prohibited by criminal law. The criminal Law, in turn, is defined conventionally as a body of specific rules regarding human conduct which has been promulgated by the political authority, which are enforced by punishment administered by state, characteristics which distinguish the body of rules regarding human conduct from other rules, are therefore, politicality, specificity, uniformity and penal sanction.”

What is an offence?

The word offence comes from the Latin word "offendere," which meaning "to strike again" and is used to describe a criminal conduct. The statute Code of Criminal Procedure, 1973 distinguishes the offences and it categorizes them as two- The first one being cognizable and the other was non- cognizable. The code also divides offences under the Indian Penal Code into two categories: bailable and non-bailable offences, based on the severity of the sentence.

According to the Criminal Procedure Code section 2 clause (c),² an offence of cognizable nature is one where a police officer is empowered to arrest without a warrant by deriving the powers under First Schedule of the code or from any other statute in India.. According to section 2 (1) of CrPC, an offence of cognizable nature is one where a police officer is not empowered to

¹ Hemant More, *What is Crime?* THE FACT FACTOR (Mar. 20 2020) https://thefactfactor.com/facts/law/legal_concepts/criminology/what-is-crime-and-criminology/7004/#:~:text=Raffaele%20Garofalo%20defines%20crime%20in,adaptation%20of%20the%20individual%20society%E2%80%9D.

² The Code of Criminal Procedure, 1973, No, 2 § 2(c).

arrest without a warrant by deriving the powers under First Schedule of the code or from any other statute in India.³ An offence is a crime that violates a specific law and necessitates a specific punishment. Or an offence is a behavior which causes people to be upset or embarrassed.⁴

General Principles in IPC

This section is part of the original Code of 1860 as drafted Lord Macaulay. The original section as it stood was “When a criminal act is done by persons, each of such persons is liable for that act in the same manner as if the done by him alone.” However, on account of certain observations made by Sir Peacock, CJ, in “Queen v Gora Chand Gope,”⁵ it was necessary to bring about in the wordings of the section. Accordingly, in the year 1870 an amendment brought which introduced the following words after “when a criminal act is done by persons.” “...in furtherance of the common intention...”. After this change, the has not been changed or amended ever.

Group liability for individuals occurs in several circumstances, they are-

- Joint Liability (common intention and Common object)
- Strict or Statutory Liability
- Criminal Liability of the Corporations.
- Vicarious Liability

Joint Liability under Indian Penal Code is dealt with Sections 34 and 149.

Section 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”

In other words when some persons assimilate in a place with a common intention to effect any criminal object, all those persons who assist in the accomplishment of that object are guilty equally,

³ The Code of Criminal Procedure, 1973, No, 2 § 2(1).

⁴ Definition of Offence, COLLINS DICTIONARY, <https://www.collinsdictionary.com/dictionary/english/offence>

⁵ Queen v Gora Chand Gope, (1866) 5 South WR (Cr) 45.

though some may be at a distance from the spot where the actual crime is committed and be ignorant of the fact what has actually be done.

The “criminal act” which was intended by the conspirators must include at least two acts; it “must be a series of acts. If only one act has been done, Section 34 cannot apply. For its applicability, it is essential that the criminal act is done by several persons. Obviously, one act cannot be done by several persons. If several persons do an act, they must do several acts even though they may be of the same nature and effect. If only one blow with a lathi is given by A, B, who is present there at the time, may be guilty as an abettor but would not be guilty under Section 34 unless his presence at the spot is itself deemed to be an act. In certain cases, it may be deemed to be an act but not in all.”

For a Person to be liable under this section the essential ingredients are

- At first, a criminal act must be done
- The act must be more than by one person
- Finally, there must be a common intention existing to all of them.

CONTENT OF THE PROJECT

ESTABLISHING JOINT LIABILITY THROUGH SECTION 34 (IPC)

The case *Barendra Kumar Ghosh v. King Emperor*⁶ is a classic example of conviction under section 34. This is also known as Shankari Tola Post Office Murder Case

Facts of the case- Ghosh was convicted for murder under 302 and 394 of IPC with section 34. The convicts killed a post master on August 23, 1923, several people appeared before the post master demanding money, this act was followed by firing with pistols. By not taking any money they ran from the incident. Ghosh was caught by police officials with the help of post office assistants. He is the appellant in this present case who was identified as one of the persons who fired at the post master, due to his distinct clothes he was distinguishable.

Contention of the appellant Before Privy Council- Against his conviction under section 302, he contended that “a criminal act” described under the section 34 as far as murder is concerned

⁶ *Barendra Kumar Ghosh v. King Emperor*, AIR 1925 PC 1.

“an act must be done which takes away the life criminally within S. 302 as the ending of S.34 says “is liable for that act in the same manner as if the act were done by himself alone” and he says that no act has been done by himself alone as to make him liable for murder. He also contends that the criminal act which takes the form of acts by several persons in their combined effect producing single result, except in case of unlawful assembly ought to be caught under abetment or attempt. This was supported by an illustration that, if there are 3 assailants and all of them fired bullets in to the victim’s brain but one bullet missed and in this circumstance one among the 3 is not the murdered and by benefit of doubt all three would be acquitted. He also says that when the crime occurred he took his stand on the portico and not present inside the post office

Before High Court- If a man is tied with rope around his neck and each men are pulling from their own ends till the man dies. This illustration is not an example of S.34. He contended that in this case lordships shall inquire not in the individual effect but the doing of death is the joint acts of both of them.

Reasoning -In a case of murder where death is the consequence of various acts, it cannot be shown that, it was not his own act which resulted death as it is not easy to determine. If the reasoning present in the High Court is to be accepted then both of them could be acquitted of murder and only be liable for attempt though the man is murdered.

As far as contention in Supreme court is observed, it was observed that the argument by the appellant focuses completely on the individual’s intention to kill, his own act and the resultant death. The answer is that, if the section is to be construed in this manner It defeats itself since multiple people cannot perform the same action as a single person. They may perform acts that are identically similar, but each act is his own, and because it is his own and relates to himself, it is not the same as the act of another. Section 34 is not to be limited in construction in this manner and if it is to be construed in the manner described by the appellant then the words “in furtherance of common intention of all” which were brought by an amendment will become invalid

Judgement - In S.34 “a criminal act” signifies a pattern of unlawful behaviour that ends in something that an individual would be punished for if he did it alone, i.e. a criminal offence. Here the lordships took the view that direction of Page J to the jury that if they were satisfied that with the aid of Section 34 if under any circumstances if the lordships were satisfied that

the post master's death was due to the act of killing in furtherance of the common intention of every convict and the present appellant, then in this circumstance the appellant would be also guilty of murder. The "criminal act" is the whole series of acts. It is, what Lord Sumner called, "unity of criminal behavior"⁷ in this case.

EFFECT OF SECTION 34 WHEN TWO CRIMES COMMITTED

In the case of Hardev Singh and Ors v. State of Punjab⁸ the supreme court by allowing the appeals of convicts Hardev Singh and Harjinder Singh held that even a "even the person not committing the particular crime could be held guilty of that crime with the aid of Section 34 of the Penal Code if the commission of the act was such as could be shown to be in furtherance of the common intention not necessarily intended by every one of the participants, is not correct". The main ingredient of section 34 which was common intention is a necessary requirement for committing that particular crime (like theft). Although the commission of actual crime was committed by any one of the persons who were having common intention like causing severe injuries (in the course of theft.)

Facts of the case- Harinder Singh, Harjinder Singh and Piara Singh were convicts in a case for the death of Tej Kaur who is the deceased mother of Kewai Singh. The Jullundur's sessions judge gave trail for all the three accused and Hardev Singh's conviction was done under Section 304 "*(Punishment for the convicts for culpable homicide, not amounting to murder)*" of IPC and he was sentenced to undergo 5 Years of Rigorous Imprisonment. Harjinder Singh who was another appellant was awarded rigorous imprisonment of 1 year for his conviction under Section 324 of IPC "*(Conviction for voluntarily causing hurt by dangerous weapons or means)*". Piara Singh is the other accused who did not prefer an appeal was awarded 6 months of rigorous imprisonment under section 323 as "*(Punishment for voluntarily Causing hurt)*". Both, the appellants, were convicted under Sec. 323 read with Sec. 34 and sentenced to 6 months in prison.

Appeal of the state was allowed by the High Court and convicted Hardev Singh with Section 302 read with 34 and awarded life Imprisonment. Harjinder Singh and Piara Singh were sentenced to four years in prison by the High Court under Sec. 326 read with Sec. 34 of the

⁷ Bashir v. State, AIR 1953 All 668.

⁸ Hardev Singh and Ors v. State of Punjab, AIR 1975 SC 179.

Penal Code. Against the convictions of both the appellants Harjinder Singh and Hardev Singh appeal was filed in the Supreme Court

Issue- Whether High Court decision was right by Convicting Hardev Singh under section 302 and 34, Harjinder Singh under Section 326 and 34.

Reasoning- By the facts of that situation the Supreme Court opined that Hardev Singh had no intention of killing Tej Kaur but could have anticipated that his fatal blow might cause the death considering the position she was in. From the case of *Harjinder Singh v. Delhi Administration*⁹ “by this Court that it could not be said with any definiteness that appellant Harjinder Singh of that case had aimed the blow at the particular part of the body of the victim knowing that it would cut the artery.” The Supreme court also considered the objective test of knowledge laid down in the case of *Virsa Singh v. The State of Punjab*¹⁰ where it was held by the Supreme court that whether “an author of an injury which on objective test has been found to be sufficient in the ordinary course of nature to cause the death of the victim had intended to cause that particular injury which caused the death. The question in such a case which falls for determination is whether the causing of the fatal injury was accidental or unintentional or whether some other kind of injury was intended to be inflicted by the assailant.”

*Judgement-*As the facts appear that Kewai Singh has only normal injuries on the body where Piara Singh was convicted for the injuries under 326 Section by the High Court this view of the High Court cannot be held correct, and there exists no intention on Harinder Singh for causing the death of Tej Kaur, but this was unintentional and the conviction was reduced from section 304 and the recording of conviction was done under Sections 323 and 324 with the help of Sec. 34

Sentence awarded by the Supreme Court to the offenders- Piara Singh who was convicted under the Sections 323 and 324 by the Apex court of India, reduced his sentence for the time which was already undergone in the prison as a prisoner. The maximum sentence to be awarded under those sections where the conviction was made is imprisonment of either description which may extend upto 1 year or with Fine which may extend to a thousand rupees or both, the punishment prescribed under Section 324 is same as like 323 but the maximum period of imprisonment prescribed is 3 years.

⁹ Harjinder Singh v. Delhi Administration, 1958 CrIj 818.

¹⁰ Virsa Singh v. The State of Punjab, AIR 1958 SC 465.

Under Section 304 of IPC Harinder Singh was awarded Imprisonment for 7 years which is rigorous in nature where his conviction was reduced from Section 302 to Section 304. The Punishment prescribed for his conviction under Section 304 Part I is either imprisonment for life or imprisonment of either description which may extend upto 10 Years.

Title of the Case- Bashir v. State¹¹

In the case of *Bashir v. State*¹² Allhabad High Court dealt extensively with the issue of section 34. Facts of the case are, Bashir is the appellant in a case where he and his sons are liable for murder under section 302 read with 34 of Indian Penal Code. The court after critical examination upheld the conviction of the appellants and several points are noteworthy here.

It noted the application of Section 34 as “If several persons do an act, they must do several acts even though they may be of the same nature and effect. If only one blow with a lathi is given by A, B, who is present there at the time, may be guilty as an abettor but would not be guilty under Section 34 unless his presence at the spot is itself deemed to be an act.” The court highlighted the difference between “common Intention” to do a criminal act and abetment. By Considering the case of *State v. Saidu Khan and Ors*¹³ where Sankar Saran J said that for the application of common intention there may not be a pre- arranged plan and a definite resolution, Section 34 can be applied even when a common intention is formed half a minute ago.

The Words of Desai J in the Case *Bashir v. State*¹⁴ are as follows – The words “in furtherance of the common intention” were added by the 1870 amendment it had to be included for a reason. That purpose could be nothing other than to hold people who act in concert accountable for an act that isn't exactly the conduct they intended to perform together, even if the unlawful act was committed in pursuit of their common goal. These words which were added from the amendment would never have been required at any circumstance if the common intention gives an implication of the intention for the very criminal act done. This means whoever does any act in furtherance of their common intention though the intention of individuals while committing the act may be other than the common intention of the group. The word ‘Furtherance’¹⁵ is defined as “the action of helping forward, “it indicates some kind of aid or assistance producing

¹¹ *Bashir v. State*, AIR 1953 All 668.

¹² *Id.* at 7.

¹³ *State v. Saidu Khan and Ors*, AIR 1951 All 21.

¹⁴ *Supra* note. 6, at 6.

¹⁵ WILLIAM OLDNALD RUSSEL, RUSSEL ON CRIME 557 (Steven & Sons 11th ed., 1958).

an effect in the 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 that felony."

Several illustrations on situations where section 34 could be applied for convicting the offenders. "First, A and B jointly agree to strike X with lathis, then the striking with lathis only can be in furtherance of their common intention and if A shoots X and kills him his act being in opposition to the common intention, cannot be said to be in furtherance of it and B will not be responsible for it. Secondly, In a similar situation where A and B similarly agreed to thrash X A openly carried a pistol and B a lathi, the use of both the weapons must be deemed to have been contemplated and A's shooting with the pistol would be an act in furtherance of the common intention. Thirdly, in the same situation If A had concealed the pistol and B did not know that he was armed with it and lie suddenly took it out and shot X. it is obvious that the common intention did not contemplate" the use of the pistol. B could not have meant its use if he was unaware of its existence, and if the person could not have intended the act done, then there would be no common intention for using it.

POSITION OF COMMON INTENTION WHEN TWIN CRIMES HAPPEN IN OTHER JURISDICTIONS

Singapore

In the case of *Lee Chezkee v. Public Prosecutor*¹⁶ this issue was dealt at a great extent "Facts of the case- The appellant was member of the gang which contains three members, where their plan was to rob the deceased who was known to them prior to this illegal act. Before this robbery, all the members of the gang agreed to the using of knife for threatening the deceased and they had elaborately discussed their issue about the identification of these members by the deceased and inform their identity to the police. While in the course of the robbery, the appellant by a knife, inflicted a non- fatal wound on the deceased, but the other member of the gang strangled the deceased to death. Trial Judge by invoking the clause of common intention in Section 34 convicted the appellant interpreting the previous judgements delivered in this issue. He then made an appeal to the court of appeal against the judgement of trial court on his conviction. The court of appeal upheld this conviction.

¹⁶ *Lee Chezkee v. Public Prosecutor* [2008] SGCA 20.

Issue- The question was whether section 34 of Penal code requires that any one member of the group also described by the court as secondary offender could be made liable for the collateral offence which was committed by one of the members who committed both the collateral acts and the primary act which was resultant was the fault of a group member which was described by the court as an offender of primary nature.

Judgement- In this case, the court looked at several Indian and other judgments from different jurisdictions and determined that in a situation of twin crimes, the second offender must be known that subjectively one of the members of party is likely that the criminal act which was also constituting the collateral offence in furtherance of the primary offence in order for the secondary offender to be held liable.

It was noted by the court that “Thus, what Section 34 means is that where the actual crime committed is not what the participants had planned, then for the other participants to be vicariously liable for the act of the actual doer the actual offence must be consistent with the carrying out of the common intention, otherwise the criminal act done by the actual doer would not be in furtherance of the common intention”

In this case the gang members on being apprehended of the victim if left would disclose them to the police officials, intended to kill him during robbery and though the appellant gave only a non-fatal wound but the main blow was given by other member of the gang, it was established that this has been done “in furtherance of the common intention” of all and the appellants conviction is upheld.

United Kingdom

Title of The case- R v. Powell, R v. English¹⁷

Facts of the cases- These two cases are two appeals arising out of an issue regarding the intention while doing the criminal act. P and D went to the residence of a drug dealer with another man to acquire narcotics in the first appeal, but the drug dealer was shot dead at the door. Although it was unclear who shot the drug dealer, P and D were found guilty of murder on the grounds that if the third guy had fired the gun, they were aware that he was armed with a gun and may use it to kill or seriously injure the drug dealer. P and D appealed their

¹⁷ R v. Powell (Anthony), [1999] 1 A.C 1.

convictions to the Court of Appeal, which dismissed their appeals. P and D then appealed to the House of Lords, which upheld their convictions.

In the second appeal, E and W were involved in a joint attack on a police officer in which they both used wooden posts to injure the officer, but the officer died from fatal stab wounds delivered by W. E was found guilty of murder by the jury after the judge instructed them to do so if they concluded that he had participated in an unlawful attack knowing that there was a strong chance that W would kill or seriously injure the police officer during the attack. E and W took their cases to the Court of Appeal, which dismissed them, and E then took his case to the House of Lords.

Issues - To what extent is intent or foresight required to establish a conviction for the murder of a third person who died in the course of a joint venture?

Judgement - For the 1st appeal- There requires a lesser degree of Mens rea to be proved for the secondary offender than the primary offender in-case of a joint criminal act this was a result of the public-policy which was needed for the practical controlling of crime that has been committed in the course of a joint criminal act. “It was sufficient to found a conviction for murder for a secondary party to a killing in the course of a joint enterprise to have realised that the primary party might kill with intent to do so or with intent to cause grievous bodily harm.”

For the Second Appeal- But in a case where, although the second party to a crime might have foreseen the bodily harm which is grievous, there exists a possibility that he may not have observed the usage of weapon for a criminal act by the principal offender. In this circumstance where the secondary offender had no information regarding the weapon employed by the primary offender the secondary party would not be held guilty of murder, “where he intended or foresaw that the primary party would or might act with intent to cause grievous bodily harm but the lethal act carried out by the primary party was fundamentally different from the acts foreseen or intended by the secondary party.”

COMPARING THIS CASE (R V. POWELL, R V. ENGLISH) WITH THE POSITION IN INDIA

In the second appeal¹⁸

¹⁸ R v. English, [1997] 3 WLR 959.

The Jury could only see that E had no reasonable foresight of W possessing a knife, the common intention of W and E was only a joint attack on the police officer and E has no foresight of W having a weapon. E has reasonable evidence to show that when W produced the knife he had fled from the scene, as the party had changed the course from the common intention by forming an intention of killing the police personnel and the party suspecting this having fled from that scene could neither be convicted nor man slaughter. This unforeseen killing is outside the common intention and it could not be foreseen. Use of Knife was an action on the part of W and not E, so he could not be held liable for murder. This case is similar to the illustration 3¹⁹ provided in the case of *Bashir v. State* where Desai J enumerated about the common intention of the second offender when the primary offender has the weapon and it was disclosed to the other one where the other offender has no intention of using the disclosed weapon.

This case when compared to *Hardev Singh v. State of Punjab*²⁰ in this case the high court of Punjab convicted Harjinder Singh with Section 326 read with 34 of IPC which on examining the evidence Supreme Court held that there exists no common intention for harjinder to give fatal injuries to neither of the victims and his conviction was transferred. In both the cases the appellants were either acquitted or conviction was transferred once the crime which was alleged to be committed was not the common intention of them.

JOINT LIABILITY- WHEN DEATH SENTENCE WAS AWARDED AND UPHELD

Title of the Case- Suresh Chandra Bahri v. State of Bihar and Ors²¹

The Brief facts of the case are Suresh and Raj Pal who are the appellants were found guilty for murdering Urshia Bahri and the two children of her under Sec. 302 and Sec. 34 of IPC by the trial court. Suresh Chandra, Gurbachan Singh, and Raj Pal Sharma, the three appellants, were all convicted of criminal conspiracy to murder Urshia and her two children stated above under Section 302/120-B of the Penal Code.

The Conviction of all the appellants was upheld by the High Court, where Death penalty, awarded by the trial court was upheld and so these appeals are preferred by them. Supreme Court upheld the death penalty of Suresh and other convicts conviction was transferred to life

¹⁹ *Bashir v. State*, AIR 1953 All 668.

²⁰ *Hardev Singh and Ors v. State of Punjab*, AIR 1975 SC 179.

²¹ *Suresh Chandra Bahri v. State of Bihar and Ors*, AIR 1994 SC 2420.

imprisonment. Supreme Court observed that the rarest of the rare doctrine promulgated by Krishna Iyer .J in the case of Bachan Singh v. State of Punjab²² was satisfied here and the four principles (1) Except in exceptional situations of responsibility, the death sentence may not be imposed, (2) Before deciding on the death penalty, the circumstances of the criminal, as well as the circumstances of the offence, should be considered, (3) The death penalty is an exception to the rule of life imprisonment. In other words, only when life imprisonment appears to be an insufficient penalty in light of the crime's circumstances may a death sentence be issued (4) Before the choice of punishment is exercised, the aggravating and mitigating circumstances must be given full weight, and a balance must be found between the aggravating and mitigating factors. In a following ruling in Machhi Singh, ²³ the Supreme Court maintained the aforementioned principles laid down in Bachan Singh's case.

The horrific and cold-blooded murder of the children by their own father in this instance demonstrates the massive scale with which it was carried out, killing practically all members of the family. Not only that, but the appellant Suresh developed a taste for the blood of his own children for no apparent reason.

Punishment for the 2 other Convicts- Remaining 2 convict's death sentence was commuted to Life Imprisonment under the Sections 302, 302 along with 120- B(1). Section 120-B is regarding the punishment of criminal conspiracy.

Section 120-B(1) says that when a person is a party in a criminal conspiracy for offences which are punished by either death, life imprisonment or rigorous for a term of 2 years or upwards, shall, were no provision is made in this Penal code shall be punishable for conspiracy in the same manner as if he has abetted.

JOINT LIABILITY UNDER OTHER STATUTES IN INDIA

Title of The Case- Souda Beevi v. Sub Inspector of the Police, Pallicka PO²⁴.

In this Instant case Souda Beevi (accused 1) and Ahmmad (accused 2) applied for bail where both the accused under several sections of IPC (420, 366, 342, 376) and Section 34 read with.

²² Bachan Singh v. State of Punjab, (1979) SCR 3 1193.

²³ Machhi Singh and ors v. State of Punjab, AIR 1983 SC 597.

²⁴ Souda Beevi v. Sub Inspector of the Police, Pallicka PO, 2012 (1) Crimes 574.

read with Section 24(b)(f)(g)²⁵ of the Emigration Act, 1983 and, Section 5²⁶ of the Immoral Traffic (Prevention) Act. The accused cheated the victim by luring her for a job in Sharja Market, but using her for having illicit relationships with several persons against her consent and will. She was also raped by accused 2. Victim on being rescued by several natives of Kerala stayed in the shelter at the Indian Consulate in Dubai and was later returned to Kochi, India. After the accused 1 returned to India an FIR was lodged against her under Souda Beevi under Sections 417, 419, 465, 468, 471, 474 read with Section 34 Indian Penal Code and Section read with 12(1)(b)²⁷ of the Indian Passport Act.

In this instant case, the bail application is for the FIR registered in 2007, but she could not be arrested as she was abroad with fake documents. There arose a fundamental question in this case as she applied for anticipatory bail when she was abroad. High Court considered the Decision of Supreme Court in *Gurubaksh Singh Sibbia v. State of Punjab*²⁸. Where SC held that Section 438 of CrPC cannot be used for the will of accused whenever he wants and escape from justice. If the person concerned is not present in India, “the court would not be able to stipulate a condition that he shall not leave India without the previous permission of the court”²⁹. “A person absent from India cannot leave India. The only irresistible conclusion that could be arrived at is that a person who is not in India or who does not intend to visit India soon, cannot conveniently remain abroad and move an application for anticipatory bail before a court in India”.

The second accused’s bail was also rejected, while rejecting the court held against the contention by the accused that according to the judgements held in the cases *Samaruddin v. Assistant Director of Enforcement*³⁰ and *Muhammed Rafi v. State of Kerala*³¹ for the offence punishable under Section 3 of the IPC³² and for the inquiry of trial under section 188 of CrPC³³ for such offences no prior requirement of central government is required and by this the contentions of accused that the victim had reported the offence in India but the crime had occurred in abroad, where it should be reported in that particular country is rejected.

²⁵ The Emigration Act, 1983, No. 31, § 24, § 10 & § 16.

²⁶ The Indian Immoral Traffic (Prevention) Act, 1956, No. 104, § 5.

²⁷ The Indian Immoral Traffic (Prevention) Act, 1967, No. 15, § 12(1)(b).

²⁸ *Gurubaksh Singh Sibbia v. State of Punjab*, AIR 1980 SC 1632.

²⁹ The Indian Penal Code, 1860, No. 45, § 438(2)(iii).

³⁰ *Samaruddin v. Assistant Director of Enforcement*, (1999) 2 KLT 794.

³¹ *Muhammed Rafi v. State of Kerala*, 2009 (1) KLT 943.

³² The Indian Penal Code, 1860, No. 45, § 3.

³³ The Code of Criminal Procedure, 1973, No. 2 § 188.

Title of the case- Surmukh Singh and Ors v. State of Punjab³⁴

This was a common judgment where 2 cases were clubbed due to the similar facts and issues where Sukhdev Singh under Sections 307³⁵/34 of IPC, Sections 27 of NDPS Act³⁶, Surmukh Singh under Section 29 of the NDPS, Mohammed Khan under Sections 307/34 of IPC and Sections 27- A, 29 of the NDPS³⁷ act and Mohammed under 307 of IPC and Sections 29, 27-A, of NDPS Act were convicted along with several others while only these four people preferred appeals. Sukhdev and Rajeev were also Convicted under Section 25(1)d of the Arms Act, 1959³⁸

Appellant Sukhdev Singh along with his co-accused Surmukh Singh, Mohammad and Mohammad Khan were involved in smuggling of heroin and weapons. They were nabbed. All of them hatched criminal conspiracy to smuggle the heroin in India along with weapons.. Mohammad and Mohammad Khan entered India illegally, where the other 2 appellants let them reside in India and were convicted of Section 27-A of NDPS act. They had ventured into Amritsar City. They were carrying weapons and one of the accused aimed gun at police. The gun was snatched by the alert police.

As far as Section 307 IPC is concerned, it is intention and not the injury which is relevant. It has come on record that one of the accused namely Rajeev Mohammad in furtherance of common intention pointed gun at the police. The accused had certainly shared the common intention to commit the offence of death against the police officer but it was futile and now it was regarded as an attempt. Thus they have rightly been convicted under, Section 307 IPC with section 34.

PUNISHMENT FOR VARIOUS OFFENCES

For being convicted under *SECTION 25 OF THE ARMS ACT*, Rajeev Mohammad and Mohammad Khan were awarded rigorous imprisonment for a term of three years (3 years) and to pay fine of Rs. Three thousand (Rs.3000/-). In default of payment of fine, they shall further undergo rigorous imprisonment for a period of one month. The maximum punishment prescribed in

³⁴ Surmukh Singh and ors v. State of Punjab, 2019 (3) RCR (Criminal) 112.

³⁵ The Indian Penal Code, 1860, No. 45, § 307.

³⁶ The Narcotic Drugs and Psychotropic Substance Act, 1985, No. 61, § 27- A

³⁷ The Narcotic Drugs and Psychotropic Substance Act, 1985, No. 61, § 27-A & §29

³⁸ The Indian Arms Act, 1959, No. 45, § 25(d).

Section 25d) is rigorous imprisonment for a term of maximum Seven Years and not less than 3 years, and fine is also imposed.

For being convicted under *SECTION 27-A OF THE NDPS ACT* Rajeef Mohammad, Mohammad Khan and v Singh were awarded imprisonment for a term of ten years (10 years) and to pay fine of Rs.1 lac (Rs.1,00,000/-). In default of payment of fine, they shall further undergo rigorous imprisonment for a period of one year. The maximum punishment prescribed by this Section is “not less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees”

For being convicted under *SECTION 307 OF THE INDIAN PENAL CODE* Except surmukh singh all of them were awarded undergo rigorous imprisonment for a term of three years (3 years) and to pay fine of Rs.Three thousand (Rs.3000/-). In default of payment of fine, he shall further undergo rigorous imprisonment for a period of one month.

CONCLUSION

Common Intention is an Important Section in the Indian Criminal Law where criminals Could be held liable jointly for their criminal acts, this section is similar to some other countries. Section 34 of the IPC can be invoked successfully if the criminal committed is shown to be the common intention of all and it was in furtherance of that common intention. It is also helpful in convicting the offenders under other statutes apart from IPC. Many attempts were made through arguments in courts to restrict the scope of section 34 of IPC, but this had not happened through the interpretation of wise Judges. Common intention is a section where a person could be convicted only for sharing his intention in the criminal act irrespective of the participation. There must be diligent perusal of the facts while convicting a person under this section.