



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 28.08.2025
Pronounced on : 29.08.2025

+ **CRL.A. 141/2024**

ASHOK BABUAppellant
Through: Mr. Kumar Gaurav Vimal, Advocate.

versus

STATE GOVERNMENT OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State

AND

+ **CRL.A. 143/2024**

RAHULAppellant
Through: Mr. Kumar Gaurav Vimal, Advocate.

versus

STATE GOVERNMENT OF NCT OF DELHIRespondent
Through: Ms. Shubhi Gupta, APP for State

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. By way of present appeals, the appellants seek to assail the judgement of conviction dated 17.10.2023 and order on sentence dated 18.01.2024 in Session Case No.110/2019 arising out of FIR No. 301/2016 registered under Sections 323/341/506/34 IPC at P.S. Karawal Nagar, Delhi.

Vide the impugned judgement, appellants stand convicted for the offence punishable under Sections 325/34 IPC and vide order on sentence,



the appellants were sentenced to undergo RI for 6 months with fine of Rs.20,000/- each, and in default of payment of fine to further undergo SI for 3 months. Benefit of Section 428 Cr.P.C. was given to the appellants.

2. The underlying facts leading to the registration of above FIR (Ex.PW-2/A) noted by the Trial Court are as under: -

“The story of the prosecution, in brief, is that on 31.08.2016 at about 11:30 PM near Hanuman Mandir, Shiv Vihar Tirah, Delhi, while Munni Devi wife of Bhoop Ram was sitting on her cart for selling fruit. Rahul, Poti Ram, Ashok Babu, Sachin and V’ (juvenile), who used to put their fruits cart nearby started quarreling with Munni Devi. In the meanwhile, Bhoop Ram also reached there and they started quarreling with him and gave beating to him. During quarrel ‘V’ (juvenile) hit on the head of Bhoop Ram with a danda due to which he started bleeding from his head. The accused persons also attacked on his body with some pointed object. They extended threats to kill him. His sister Premwati also arrived there and she also started quarreling with him. Bhup Ram went to GTB hospital along with his son-in-law Ram.”

3. On completion of investigation, charges were framed. In the trial, the prosecution examined 5 witnesses. The complainant *Bhup Ram* was examined as PW1, Dr. *Sandeep Kumar* who proved the MLC was examined as PW4, ASI *Radhey Shyam*, the IO, deposed as PW5. Rest of the witnesses were formal in nature and deposed as to various aspects of investigation. Appellants in their statement under Section 313 Cr.P.C., took the defence of false implication because the complainant had taken money from the appellant/*Ashok*’s wife, which he was not returning. In defence, they examined 2 witnesses; *Rohtash Singh* who was an eyewitness to the incident as DW1 and *Premwati*, wife of the appellant/*Ashok* who happened to be



sister of the complainant as DW2. During the pendency of trial, the proceedings were abated for co-accused *Sachin* and *Poti Ram* on account of their death.

4. Learned counsel for the appellants submits that the appellants are innocent and have been falsely implicated in the present case by the complainant. It is submitted that the complainant had borrowed around Rs.60,000/- from his sister i.e., DW2, and on the day of the incident, the complainant abused DW2 when she asked for return of the money. The injury on complainant is sought to be explained by stating that he had slipped and hit his head on the handle of his *rehri*. It is further contended that neither the weapon of offence was recovered, nor any specific role has been attributed to the appellants and further that there was no common intention to attract Section 34 of the IPC.

5. *Per contra*, learned APP for the State has supported the impugned judgement. He submits that the complainant has been consistent and reliable and his testimony is supported by the MLC. It is further submitted that the reason of injury being the complainant slipping is unbelievable and clearly an afterthought. It is submitted that the testimony of *Premwati* is contradictory to the defence version as the amount stated to be borrowed by the complainant is different.

6. A perusal of the complainant's testimony reveals that on 31.08.2016, at about 11.30 PM, the appellants alongwith other accused persons including one JCL, were quarrelling with his wife who was present on a fruit *rehri*. When the complainant reached there, the JCL inflicted *danda* blow on his head. He further deposed that one of the other four accused persons inflicted injury with pointed edge weapon. In his cross-examination, he admitted that



he could not tell who inflicted injuries on him with the pointed edge weapon.

7. The IO, ASI Radhey Shyam was examined as PW5. He stated that on 31.08.2016, upon DD No.77-B being marked to him, he reached the spot where no one was found and it was revealed that injured had gone to hospital. He met the complainant in the hospital on 01.09.2016, however the complainant refused to make the statement. Rather, he came to the police station on 02.09.2016 and then gave his statement (Ex.PW1/A). In his cross examination, he stated that at the spot neither any weapon of offence was found nor was any blood noticed. Though he stated that the incident had taken place at a public place, and that 5-10 people were present at the spot when he reached there from whom he had enquired about the incident, however, he did not note their names and addresses. Indisputably, no public witness has been cited.

8. The MLC was proved by Dr. Sandeep Kumar, examined as PW4. 3 x 1 cm laceration over frontal area, abrasion over chest and the nature of injury was found to be grievous.

9. One *Rohtash Singh* was examined by the appellants as DW1. He stated that on the day of the incident, he witnessed an altercation between the complainant and his sister, DW2 over a cash transaction and the complainant was abusing her. When the complainant got down from his *rehri* to beat DW2, he slipped and injured his head from the wooden handle of the *rehri*.

10. *Premwati*, the sister of the complainant and the wife of the appellant/*Ashok* was examined as DW2. She deposed that on the day of the incident, she asked the complainant to return Rs.60,000/- which he had



borrowed from her, whereafter he started abusing her. She further deposed that the sons of the complainant also abused her. She stated that the complainant fell down and got injured by his *rehri*. She further deposed that one FIR bearing No. 270/2017 was registered at PS. Karawal Nagar under section 323/354/506/34 IPC on her complaint at the direction of the Ld. MM against the complainant and his sons. In her cross-examination, she admitted that the relations were not cordial with the complainant since 2016.

11. The appellants have been convicted under Section 325 read with Section 34 IPC. Section 325 prescribes the punishment for voluntarily causing grievous hurt. It is not in doubt that the complainant had suffered grievous hurt, and the same is reflected from the MLC as well. Section 34 of the IPC reads as under:

“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.”

Section 34 IPC lays down a scenario wherein a person is held to be vicariously liable for the act of others. It does not create any distinct offence, but it lays down the principle of constructive liability. However, before this liability arises, there are two requirements of the Section which need to be met. Firstly, there must exist a common intention i.e., some pre-arranged plan. Secondly, the person sought to be held liable had participated in some manner in the act constituting the offence. The common intention should be formed prior to the commission of the act, but the gap need not be large. It can form on the spot as well. The existence of common intention needs to be proved by the evidence on record. Since it is difficult to prove common



intention by direct evidence, it has to be inferred from the conduct of the accused, evidence and documents on record and other relevant circumstances. Due reference in this regard may be made to the decision of Supreme Court in Virendra Singh v. State of M.P.,¹ wherein it was held as under: -

“37. Under the Penal Code, a person is responsible for his own act. A person can also be vicariously responsible for the acts of others if he had a common intention to commit the acts or if the offence is committed by any member of the unlawful assembly in prosecution of the common object of that assembly, then also he can be vicariously responsible. Under the Penal Code, two sections, namely, Sections 34 and 149, deal with the circumstances when a person is vicariously responsible for the acts of others.

38. The vicarious or constructive liability under Section 34 IPC can arise only when two conditions stand fulfilled i.e. the mental element or the intention to commit the criminal act conjointly with another or others; and the other is the actual participation in one form or the other in the commission of the crime.

39. The common intention postulates the existence of a prearranged plan implying a prior meeting of the minds. It is the intention to commit the crime and the accused can be convicted only if such an intention has been shared by all the accused. Such a common intention should be anterior in point of time to the commission of the crime, but may also develop on the spot when such a crime is committed. In most of the cases it is difficult to procure direct evidence of such intention. In most of the cases, it can be inferred from the acts or conduct of the accused and other relevant circumstances. Therefore, in inferring the common intention under Section 34 IPC, the evidence and documents on record acquire a great significance and they have to be very carefully scrutinised by the court. This is particularly important in cases where evidence regarding development of the common intention to commit the offence graver than the one originally designed, during execution of the original plan, should be clear and cogent.

40. 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. Common intention implies acting in concert.

41. The essence of Section 34 IPC is a simultaneous consensus of the minds of the persons participating in criminal action to bring about a particular result. Russell in his celebrated book Russell on Crime, 12th Edn., Vol. 1 indicates some kind of aid or assistance producing an effect in future and adds that any act may be regarded as done in furtherance of the ultimate felony if it is a

¹ (2010) 8 SCC 407



step intentionally taken for the purpose of effecting that felony. It was observed by Russell that any act of preparation for the commission of felony is done in furtherance of the act.

42. Section 34 IPC does not create any distinct offence, but it lays down the principle of constructive liability. Section 34 IPC stipulates that the act must have been done in furtherance of the common intention. In order to incur joint liability for an offence there must be a prearranged and premeditated concert between the accused persons for doing the act actually done, though there might not be long interval between the act and the premeditation and though the plan may be formed suddenly. In order that Section 34 IPC may apply, it is not necessary that the prosecution must prove that the act was done by a particular or a specified person. 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.”

12. Every person charged for an offence by invoking Section 34 IPC must participate in some form or other in the offence to make him liable. Giving the actual blow or even physical presence on the spot is not necessary. Merely standing guard or omitting to act when someone else commits an offence in furtherance of their common intention would be sufficient to attract liability under Section 34 IPC. However, the common intention, as well as some participation, both need to be proved. Reference in this regard may be made to the recent decision of the Supreme Court in Vasant v. State of Karnataka,² wherein it was held as under: -

“75. It is, therefore, evident that every person charged with the aid of Section 34, must in some form or the other participate in the offence in order to make him liable thereunder...

76. The element of participation in the commission of the offence is the chief feature that distinguishes Section 34, IPC from Section 149, IPC and other kindred sections.

² 2025 SCC OnLine SC 337



86. *It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder”, (pp. 457-458).*

87. *The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.*

88. *On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.”*

13. Coming to the facts of the present case, the complainant deposed that all the accused persons including the appellants were quarreling with his wife, and when he intervened, they quarreled with him. He categorically states that the JCL inflicted the *danda* blow on his head and one person out of the four accused he named, inflicted injuries with a pointed edge weapon but he could not identify who that was. He has failed to attribute any act, overt or covert, to the appellants. It is not stated that they marched together, or that they were armed with weapons, or they were the ones who inflicted injuries with the *danda* or the pointed edge weapon. It is not even stated that they stood guard and prevented others from helping the complainant. The only common act the complainant had attributed to them is of quarrelling, but that does not by itself clothe them with the common intention of causing grievous hurt to the complainant. Quarrelling can be verbal as well, and in



absence of any specific act being attributed to the appellants by the complainant, it was for the prosecution to bring forth other evidence or witnesses to fulfil the ingredients of the offence. The appellant's presence at the spot was natural. Despite the incident taking place at a public place, no eyewitnesses were examined. The IO, PW5 had stated that when he reached the spot, he was informed that the complainant was taken to the hospital, and that there were around 5-10 people present on the spot. None of their statements were taken. Even the wife of the complainant, the quarrel with whom was the stated genesis of the incident, was not examined in trial. The incident occurred on 31.08.2016, the complainant was given on 02.09.2016 and the appellants were arrested on 03.09.2016. No weapon was recovered from them.

14. On the contrary, the defence produced DW1 and DW2, both of whom stated that they were present at the spot. Their stand was that an altercation had taken place between DW2 and the complainant, who are siblings, over the complainant borrowing some money from DW2 and not returning it. Their case was that the complainant slipped and fell, which caused his injury. DW2 further deposed that an FIR No. 270/2017, was registered at PS Karawal Nagar under section 323/354/506/34 IPC at her behest. As noted above, the appellants *Ashok* and *Rahul* are the brother-in-law and nephew of the complainant respectively, with *Ashok* being married to DW2/*Premwati*.

15. An overall view of the facts and circumstances reveals that the prosecution has miserably failed to prove the existence of a common intention to cause grievous hurt to the complainant and moreover they failed to detail any act, overt or covert, which helped in furtherance of any such common intention, even if it is presumed to have existed. The complainant



further did not allege that the appellant had shared a common intent or that any exhortation was given by him before the JCL hit with the *danda*. In view of the above, Section 34 could not have been invoked to secure a conviction under Section 325 of the IPC. Resultantly, their conviction under sections 325/34 IPC cannot be sustained and therefore, the appellants are acquitted for the commission of said offences.

16. The appeals are allowed.

17. Since the sentence of the appellants was suspended vide order dated 14.02.2024, their bail bonds are cancelled and sureties stand discharged.

18. A copy of this judgment be communicated to the concerned Trial Court as well as to the concerned Jail Superintendent.

MANOJ KUMAR OHRI
(JUDGE)

AUGUST 29, 2025/ry