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Mukesh Kumar vs State

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Court : Delhi

Decided On : Jun-18-2026

Judge : Hon'Ble Mr. Justice Navin Chawla,Hon'Ble Mr. Justice Ravinder Dudeja

Appeal No. : CRL.A./602/2004

Appellant : Mukesh Kumar

Respondent : STATE

Advocate for Pet/Ap. : Mr. Karan Jain

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 02.05.2026

Pronounced on: 18.06.2026

+ CRL.A. 602/2004 SHRI MUKESH KUMAR .....Appellant Through: Mr.Himanshu Anand Gupta, Ms.Mansi Yadav, Mr. Karan Jain, Mr.Mike Desai, and Mr.Shekhar Anand Gupta, Advs.

versus

STATE/ NATIONAL CAPITAL TERRITORY OF DELHI

.....Respondent Through: Mr.Aman Usman, APP with Mr.Manvendra Yadav and Mr.Atiq Ur Rehman, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

JUDGMENT

NAVIN CHAWLA, J.

1. This appeal has been preferred by the appellant, assailing the

Judgment dated 10.08.2004 passed by the learned Additional Sessions

Judge, New Delhi (hereinafter referred to as Trial Court) in S.C. No. Lajpat Nagar, vide which the appellant was convicted for the offence

punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (IPC).

2. The appellant further challenges the Order dated 19.08.2004

passed by the learned Trial Court, whereby the appellant has been sentenced to undergo imprisonment for life, with fine of Rs.1,000/-, and in default, to undergo further simple imprisonment for one month.

CASE OF THE PROSECUTION

3. Briefly stated, it is the case of the prosecution that:

a. On 01.12.1983, a telephonic information was received in P.S. Lajpat Nagar through PW-2/Ct. Rup Singh posted at AIIMS Hospital regarding the admission of the deceased- Vinod with knife injuries sustained while he was in bus route no. 431 at Gupta Market Bus Stand Right Road. He had been admitted in the hospital by PW-4/HC Jagpal Singh. The information was recorded in DD No. 16A and handed over to PW-27/SI Suraj Parkash. b. Thereafter, PW-27/SI Suraj Parkash along with Const. Lachhman Dass decided to head to the AIIMS Hospital. While leaving for the hospital, they met the driver, PW- 10/Prem Chand and conductor, PW-13/Siripal Singh of the DTC bus, who were bringing injured PW-5/Usha to the police station. They took her to the hospital as well for treatment.

c. On reaching the hospital, the deceased was found in an injured condition and the doctor opined that his injuries were dangerous and caused by a sharp object. He was declared unfit to make a statement. d. PW-27/SI Suraj Parkash then recorded the statement of PW- 5/Usha, on the basis of which the FIR was registered against unknown persons. e. In her statement, PW-5/Usha stated that she was working as a nurse in Safdarjung Hospital and was on visiting terms with the deceased. On 01.12.1983, she along with her friend PW-7/Alka had gone to Lajpat Nagar with the deceased, who was also accompanied by his two friends, PW-11/Ashok and PW-6/Naginder Kumar. They all took food and then boarded the bus route No.431 for Safdarjung. While she and PW-7/Alka sat on the ladies seat in the bus on the left hand side, the deceased sat on the side seat. Meanwhile, three persons standing on the side of the driver started talking to each other by pointing out towards them and

thereafter all three of them came near their seat and started misbehaving with them. The deceased told them to behave, upon which one of those three persons took out a knife and stabbed the deceased on the back. That person proceeded towards them and when PW-5/Usha protested, the said person attacked her also with the knife and she received a scratch on left side of her chin. She gave the description of the person who

attacked them to be of 20-25 years of age with average height and strong built. She also gave the description of the clothes worn by the assailant. She further stated that the two associates of the assailant were also threatening to kill them. They were all stated to be young men. She stated that after giving knife blow to them, all the three culprits got down from the bus and went away. The deceased tried to chase them and they got separated from the deceased. The bus was thereafter brought to the Police Station, Lajpat Nagar, from where she had been taken to AIIMS where the deceased was also admitted. f. On 02.12.1993, the deceased, unfortunately, succumbed to his injuries. g. Thereafter, on 03.12.1993, the statements of PW-6/Naginder Kumar and PW-11/Ashok were recorded. Allegations of being physically assaulted by the miscreants were also levelled by PW-6/Naginder Kumar. h. On 27.12.1983, PW-7/Alka went to the Police Station and told the police that one of the accused who had participated in the incident was standing at Garhi Mod. She along with the police went to the place from where accused-Shyam Lal was arrested. Basis his disclosure, accused-Mukesh Kumar (the appellant herein) and accused-Balvinder were also arrested on the same day, while accused Charanjit was

arrested on 30.12.1983. Basis the disclosure statement of accused-Balvinder, a knife was also recovered. i. On 05.01.1984, all the accused persons including the appellant refused to participate in the Test Identification Parade (TIP). j. On completion of investigation, a Charge-Sheet was filed against all the accused, including the appellant herein, under Sections 302/307/34 IPC and under Sections 25/27 of the Arms Act, 1959 (Arms Act).

PROCEEDINGS BEFORE THE LEARNED TRIAL COURT

4. Thereafter, the learned Trial Court framed the following

charges against the accused persons: That you Balvinder s/o Inder Singh, Charanjit Singh s/o Madan Mohan, Shyam Lal s/o Kishan Lal and Mukesh s/o Baldev Raj on 1.12.83 at about 8.45p.m. in bus route no.431 near bus stand Gupta Market, Lajpat Nagar, New Delhi within the jurisdiction of P.S. Lajpat Nagar in furtherance of the common intention of you all committed the murder of Vinod Kumar who was stabbed by Balvindeer Singh with a knife and thereby committed an offence punishable u/s 302 read with S.34 I.P.C. and within my cognizance.

Secondly, on the same date, time and place in furtherance of the common intention of you all Balvinder Singh and Charanjit stabbed Ashok and Kumari Usha with knives with the intention and knowledge and under such circumstances that it death would have caused to them, you would have been guilty of murder

and thereby committed an offence punishable u/s 307/34 I.P.C and within my cognizance.

And I hereby direct that you be tried by this court on the abovesaid charges.

5. Additional charges under Sections 25, 27, 54 and 59 of the

Arms Act were also framed against accused-Balvinder Singh and accused-Charanjit.

6. The accused persons pleaded not guilty and claimed Trial.

7. In order to prove its case, the prosecution examined twenty

eight witnesses, including the purported eye-witnesses/victims, the bus conductor, police officials and other formal witnesses.

8. Unfortunately, accused-Charanjit died during the Trial and the

proceedings against him were terminated.

9. The statements of the remaining accused persons, that is,

Balvinder, Mukesh Kumar and Shyam Lal were recorded under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.). They denied the incriminating evidence against them, claimed false implication, and led defence evidence. The appellant brought forth DW-2/Baldev Raj, father of the appellant, who deposed that on the date of the alleged incident, the appellant was not even in Delhi.

IMPUGNED ORDERS OF CONVICTION AND ON SENTENCE

10. The learned Trial Court, in the impugned judgment of

conviction, in so far as the charge pertaining to Section 302 of the IPC is concerned, opined that the occurrence of the incident in question and the identity of the accused persons stood proved, basis the

testimonies of the eye-witnesses. It was held that PW-5/Usha identified accused-Balvinder in Court as the person who stabbed her and the deceased. She further identified accused-Charanjit and accused-Shyam Lal as the persons who gave fist blows to her. It was opined that PW-7/Alka and PW-11/Ashok had identified accused- Charanjit as the person who gave the knife blow to PW-11/Ashok. Further, the appellant had been identified in Court by PW-6/Naginder Kumar and PW-7/Alka as the one who had exhorted from the back of the bus. It was held that there were only minor improvements in the statements of these eye-witnesses, which did not go to the root of the case, and that there was no reason to falsely implicate the accused persons. Reliance was also placed on the testimonies of the driver and the bus conductor, which the learned Trial Court found to be in support of the prosecutions case.

11. It was opined that although the accused persons were arrested

after around 27 days from the date of the incident and were not named in the FIR, there were no infirmity in the prosecutions case regarding the manner of their arrest, the subsequent disclosure statements made, and the recovery of the knife on the basis of the statement of accused-Balvinder.

12. The story of the accused persons of them being shown to the

witnesses prior to the TIP was disbelieved, and it was held that the

accused persons had been kept in muffled face throughout. It was held

that their refusal to participate in the TIP would lead to a presumption being drawn against them.

13. As regards the intention to cause such bodily injuries which are

likely to, or are sufficient to cause death in the ordinary course of nature, it was held that the intensity of the knife blows was such that it caused the death of the deceased. Reliance was placed on the post- mortem report of the deceased as also the medical opinion given by PW-26/Dr. Chander Kant.

14. It was held that, therefore, the accused persons were guilty of

the offence under Section 302 read with Section 34 of the IPC.

15. In so far as the charge pertaining to Section 307 of the IPC is

concerned, it was opined that both PW-5/Usha and PW-11/Ashok had stated that it was accused-Balvinder who had injured PW-5/Usha with a knife while it was accused-Charanjit who had injured PW-11/Ashok . It was highlighted that as accused-Charanjit had expired, the proceedings against him had abated. In so far as the injuries sustained by PW-5/Usha are concerned, placing reliance on her MLC report, it was opined that the same were simple in nature and the accused- Balvinder was guilty of offence under Section 324 of the IPC. He was also held guilty of offence under Sections 25 and 27 of the Arms Act on account of the recovery of the knife made on the basis of his disclosure statement.

16. Thereafter, the order on sentence dated 19.08.2004 was passed,

imposing the sentence on the appellant, as has been noted hereinabove.

17. The sentence of the appellant was suspended by this Court vide

order dated 03.05.2005.

18. It is pertinent to mention that the appeals filed by accused-

Balvinder and accused-Shyam Lal against the impugned orders stand abated vide orders dated 10.05.2012 and 19.12.2013, respectively.

SUBMISSIONS MADE BY THE LEARNED COUNSEL FOR THE APPELLANT

19. The learned counsel for the appellant submits that the

statements of the eye-witnesses suffer from various material contradictions that go to the very root of the prosecutions case and ought not to have been relied upon in order to establish the guilt of the appellant.

20. He submits that there are various infirmities in the sequence of

sitting of the witnesses in the bus. While PW-5/Usha states that the deceased got a seat on the adjoining berth from where she and PW-7/Alka were sitting, and that PW-11/Ashok got a seat immediately behind the deceased, in contrast, PW-6/Naginder Kumar states that PW-11/Ashok had occupied the seat to the right side of PW-5/Usha and PW-7/Alka, while the deceased sat behind him.

21. He submits that further contradictions exist with regard to

sequence in which the alleged accused persons entered the bus, in as much as, PW-5/Usha and PW-7/Alka do not mention anything regarding the entry of the appellant into the bus, which differs from the statements of PW-6/Naginder Kumar and PW-11/Ashok, who both state that the appellant entered from the back door of the bus.

22. He submits that the sequence and nature of the alleged attacks

as also the identity of the assailants involved, differs in the testimonies of the eye-witnesses. While PW-5/Usha states that the deceased was stabbed by accused-Balvinder on his right buttock, PW-6/Naginder Kumar states that the deceased was stabbed by the accused-Balvinder in his back. Further, while PW-5/Usha states that she heard two whistles from behind followed by the words Maro Sale Ko, PW- 6/Naginder Kumar does not mention hearing any whistling sound. While PW-5/Usha, PW-6/Naginder Kumar and PW-11/Ashok state that PW-5/Usha was stabbed after the stabbing of PW-11/Ashok; PW- 7/Alka states that PW-11/Ashok was stabbed after PW-5/Usha.

23. He further highlights that the testimony of PW-5/Usha is also at

variance with her statement under Section 161 of the Cr.P.C., wherein she did not mention that the deceased was stabbed on his right buttock or that she heard someone whistling prior to exhorting Maro Sale Ko.

24. He submits that in so far as the TIP is concerned, no

presumption can be drawn again the appellant as he was admittedly shown to persons prior to the same being conducted. He submits that hence, the dock identification of the appellant by some of the eye-witnesses is also of no consequence. He submits that even otherwise, in

the dock identification it has come out that one out of the four main eye-witnesses, that is, PW-5/Usha, never saw the person that allegedly exhorted from the back of the bus and did not recognise the appellant.

25. He submits that there were also discrepancies in the testimonies

of the eye-witnesses regarding the involvement of the appellant in giving fist blows to PW-6/Naginder Kumar, a fact which was not even mentioned in the charge framed against him. He submits that even a question to this effect was not put to the appellant at the time of recording his statement under Section 313 of the Cr.P.C.

26. The learned counsel for the appellant further submits that

although it was the case of the prosecution that the bus conductor, PW-13/Siripal Singh, was at the back of the bus and allegedly the appellant also entered from the back door of the bus, PW-13/Siripal Singh does not in his testimony state that he heard anyone yell Maro Sale Ko, let alone give fist blows to anyone.

27. He submits that there is also no mention of common intention in

the statement of the appellant recorded under Section 313 of the Cr.P.C..

28. Basis the above, he submits that the prosecution has not been

able to prove the guilt of the appellant and the impugned orders are liable to be set aside.

SUBMISSIONS MADE BY THE LEARNED ADDITIONAL

PUBLIC PROSECUTOR FOR THE RESPONDENT

29. Mr. Aman Usman, the learned Additional Public Prosecutor,

submits that there is no merit in the submission of the learned counsel for the appellant that the appellant was shown to the witnesses prior to the TIP. The appellant was brought in muffled face to the Court and

all the requisite processes for conducting TIP were duly followed. The onus of proving that the accused had been shown to the witnesses prior to the TIP, is on the accused. He submits that it is settled law that once the TIP is refused by an accused, an adverse inference can be drawn against him.

30. He submits that the identity of the appellant as the person who

had exhorted to the other accused persons and even participated in the assault, has been established by the testimony of PW-7/Alka, PW-6/Naginder Kumar and PW-11/Ashok. He submits that it is not refuted that there was no prior enmity between the appellant and the witnesses, and hence, there exists no reason for the witnesses to falsely implicate the appellant.

31. He highlights that just because an eye-witness did not identify

the appellant, this fact alone cannot lead to the acquittal of the appellant. He submits that it is settled law that even if single witness identifies an accused, it is enough to convict him.

32. He submits that the common intention of the assailants arose

when they boarded the bus with knives.

33. He submits that minor contradictions in the statements of the

witnesses pointed out by the learned counsel for the appellant, are not sufficient to create a doubt in favour of the appellant. With the passage of time and fading memory, these contradictions can occur but no emphasis can be placed on the same to throw out the case of the prosecution.

34. He submits that hence, there is enough evidence to establish the

guilt of the appellant and that the conviction recorded by the learned Trial Court is well-founded and calls for no interference by this Court.

ANALYSIS AND FINDINGS

35. We have considered the submissions made by the learned

counsels for the parties and perused the record.

36. The case of the prosecution rests primarily on the testimony of

the eye-witnesses, the appellants refusal to participate in TIP proceedings and his subsequent dock identification, as also on other circumstantial evidence. TIP and Dock Identification

37. As far as the law concerning TIP is concerned, it is no longer

res integra that, prior to the TIP being conducted, an accused person must not be shown to the witnesses. The Supreme Court in Gireesan Nair & Ors. v. State of Kerala, (2023) 1 SCC 180, has held that if an accused person is shown to witnesses at any prior point of time, not only is the TIP inadmissible, even the subsequent dock identification of such an accused by witnesses is inconsequential. We quote from the said judgment as under: 31. In cases where the witnesses have had ample

opportunity to see the accused before the identification parade is held, it may adversely affect the trial. It is the duty of the prosecution to establish before the court that right from the day of arrest, the accused was kept baparda to rule out the possibility of their face being seen while in police custody. If the witnesses had the opportunity to see the

accused before the TIP, be it in any form i.e. physically, through photographs or via media (newspapers, television, etc.), the evidence of the TIP is not admissible as a valid piece of evidence (Lal Singh v. State of U.P. and Suryamoorthi v. Govindaswamy).

32. If identification in the TIP has taken place

after the accused is shown to the witnesses, then not only is the evidence of TIP inadmissible, even an identification in a court during trial is meaningless (Sk. Umar Ahmed Shaikh v. State of Maharashtra). Even a TIP conducted in the presence of a police officer is inadmissible in light of Section 162 of the Code of Criminal Procedure, 1973 (Chunthuram v. State of Chhattisgarh and Ramkishan Mithanlal Sharma v. State of Bombay).

38. In Raj Kumar@Bheema v. State of NCT of Delhi, 2025 INSC

1322, the Supreme Court opined that no adverse inference can be drawn against accused persons for non-participation in TIP proceedings in scenarios wherein the authenticity of the proceedings themselves are under serious doubt. It was held as under: 65. In this view of the matter, the prosecution version that efforts made to subject the accused to TIP failed on account of their refusal, stands refuted. While the refusal of the appellant to participate in the TIP may, prima facie, invite an adverse inference, mere such inference cannot support the theory of identification when the very authenticity of the TIP is under a serious cloud of doubt.

When it stands established from the record that the TIP attempted by the prosecution was fundamentally flawed, and a doubt is created that the identifying witness herself may not even have been present to participate therein,

the very foundation of the identification proceedings falls flat to the ground.

39. In the case at hand, the prosecution claims that the arrest of the

appellant took place on 27.12.1983. Thereafter, he was produced before the learned Metropolitan Magistrate in muffled face on 28.12.1983, and remanded to judicial custody till 05.01.1984. On 05.01.1984, the appellant was again produced before the learned Metropolitan Magistrate (PW-22/Sh. OP Gupta) for the purpose of TIP, but refused to participate in the same citing having been seen by several persons.

40. To test the above reason for refusal to participate in the TIP, we

shall first examine the testimony of the witnesses.

41. PW-6/Naginder Kumar identified the appellant as one of the

four who had come to the Bus Stop after them. He states that while three of the accused boarded the bus from the front, the appellant boarded it from the back. He states that while the deceased and the others in his party sat in the front, he stood near with the conductor to take the tickets. He states that the appellant exhorted from the back Maro Salle Ko. He states that the appellant also gave him fist blows from his back side. He states that on 05.01.1984 he came to know that the accused were to be produced in the court. He states that he came himself to see the accused persons and found them to be the same persons involved in that

incident. He admits that relations of the deceased had gone to the Police Station to see the accused persons on their arrest. He states that though he did not go to the Police Station

along with them, he was informed by the father of the deceased that the accused would be produced in the court and he, on his own accord, came to the court to see the accused persons along with PW-11/Ashok. He states that he reached the court at about 10 a.m.; the accused persons came to court after about 30-35 minutes and thereafter, he along with others left. He states that he did not meet any police official in the court. Most importantly, he states that the accused were not in muffled face. He states PW-7/Alka informed him of the names of the accused outside the Court on 05.01.1984.

42. From a reading of the statement of PW-6/Naginder Kumar, we

are left with a doubt as to whether the accused persons, including the appellant herein, were indeed shown to the witness prior to their TIP. As noted above, PW-6/Naginder Kumar has admitted that the family members of the deceased had gone to the police station on hearing of the arrest of the accused persons and that the accused persons had been produced in court with unmuffled face.

43. As far as PW-7/Alka is concerned, it is pertinent to highlight

that she admittedly did not see the appellant at the time of the incident, as he is stated to have participated in the incident from behind in the bus, while the said witness was sitting in the front. In addition, in her testimony she has stated that she along with PW-6/Naginder Kumar and PW-11/Ashok had gone to the Court on 28.12.1983, when the accused-Shyam Lal was produced and that he was not in muffled face at that time. Admittedly, three accused persons, including the appellant herein,

had been produced together before the learned

Metropolitan Magistrate for taking a date for their TIP and for their remand to Judicial Custody. Therefore, though the order dated 28.12.1983 (Mark X1) records that the accused persons had been produced in muffled face, there is a doubt created if they were in muffled face before being produced before court or thereafter before being sent to Judicial Custody.

44. Even PW-11/Ashok, in his testimony, has stated that he

identified the accused persons in the Court compound when they had come to the Court around a month after the incident.

45. The testimony of the above witnesses, therefore, cast serious

doubts on whether the accused persons were seen by several persons, including the witnesses, on or before 28.12.1983 or at anytime before they were produced for their TIP proceedings.

46. Turning to the proceedings of the day when the TIP was

scheduled to be conducted, we find that it has been recorded in the

order sheet dated 05.01.1984, exhibited as Ex.PW-22/B, Ex.PW-22/C

and Ex.PW-22/D, that All the four accused persons are present in J.C. in open face. Furthermore, even PW-22/Sh. OP Gupta, the learned Metropolitan Magistrate in charge of the TIP, in his testimony has stated that I cannot say if accused were brought directly from judicial custody or

were detained outside the court room.

47. Given the circumstances as discussed hereinabove, we find that

the authenticity of the TIP proceedings is under a serious cloud of doubt. Resultantly, the refusal of the appellant to participate in the TIP cannot invite an adverse inference against him. Hence, despite the fact

that PW-6/Naginder Kumar, PW-7/Alka and PW-11/Ashok identified

the appellant in dock identification, in accordance with the judgment

of the Supreme Court in Gireesan Nair (supra) and for the reasons as recorded hereinabove, we do not deem it fit to place reliance on the same. Contradictions in the testimony of the alleged eye-witnesses

48. While there is no cavil that even the testimony of a single eye-

witness is enough to establish the identity of an accused, and minor contradictions in the statements of the witnesses, either with their previous statements or inter-se each other, are not sufficient to cast a doubt on the case of the prosecution, at the same time, such testimony must be wholly reliable, truthful and trustworthy.

49. The testimonies of the eye-witnesses in the present case are not

of stellar quality and their conduct in the aftermath of the incident is questionable.

50. PW-6/Naginder Kumar in his testimony has stated that the

deceased was his friend but in the same breath has also mentioned that after the incident took place, he went home and slept. His statement was recorded by the police after two days, though he states that he also went to the hospital to check on the deceased on the day of the incident and even on the next day when the deceased unfortunately passed away. Even when he went to the hospital, despite seeing PW- 5/Usha and PW-7/Alka there, he did not approach them or the police officials standing with them. He did not enquire with PW-5/Usha

about her injury. It is rather after the death of the deceased that his statement was recorded by the police on 03.12.1983.

51. Similar is the case in as far as PW-11/Ashok is concerned. He

mentioned that the deceased was his childhood friend but did not take him to the hospital. He stated that he visited the hospital on the night of the incident and saw police officials present there. His statement, however, was recorded only on 03.12.1983.

52. This leaves us with PW-5/Usha and PW-7/Alka.

53. As far as PW-5/Usha is concerned, though there are

contradictions pointed out by the learned counsel for the appellant in her statement, as far as the appellant is concerned, she would not have seen the appellant as he was allegedly standing at the back of the bus. She claims to have only heard the whistling and the exhortation. This is not sufficient to conclusively prove that it was the appellant who had done these acts.

54. Similar is the case as far as PW-7/Alka is concerned, though

contradictions have been pointed out in her testimony, she has herself in her testimony stated that she did not see the gentleman who is alleged to have exhorted from the back of the bus. Section 34 of the IPC

55. Be that as it may, we now turn to the role attributed to the

appellant by the prosecution.

56. The appellant has been acquitted of the charge under Section

307 read with Section 34 of the IPC. Furthermore, the allegations of fist blows as levelled by PW-6/Naginder Kumar in his testimony

against the appellant, have not even formed part of the charge against the appellant. Similar is the case with the allegations concerning the beating up of PW-5/Usha and PW-7/Alka after the stabbing took place. Hence, admittedly, no overt act involving use of any weapon has been assigned to the appellant, and his roll has been limited to an alleged exhortation of the words Maro Sale Ko from the back of the bus. It is on this basis that he has been held guilty of the offence punishable under Section 302 read with Section 34 of the IPC for the alleged stabbing of the deceased by accused-Balvinder.

57. The Supreme Court in Jasdeep Singh v. State of Punjab,

(2022) 2 SCC 545, describing the elements required to prove common

intention under Section 34 of the IPC, opined as under: Section 34 IPC xxx

20. Section 34 IPC creates a deeming fiction

by infusing and importing a criminal act constituting an offence committed by one, into others, in pursuance to a common intention. Onus is on the prosecution to prove the common intention to the satisfaction of the court. The quality of evidence will have to be substantial, concrete, definite and clear. When a part of evidence produced by the prosecution to bring the accused within the fold of Section 34 IPC is disbelieved, the remaining part will have to be examined with adequate care and caution, as we are dealing with a case of vicarious liability fastened on the accused by treating him on a par with the one who actually committed the offence.

21. What is required is the proof of common

intention. Thus, there may be an offence

without common intention, in which case Section 34 IPC does not get attracted.

22. It is a team effort akin to a game of

football involving several positions manned by many, such as defender, mid-fielder, striker, and a keeper. A striker may hit the target, while a keeper may stop an attack. The consequence of the match, either a win or a loss, is borne by all the players, though they may have their distinct roles. A goal scored or saved may be the final act, but the result is what matters. As against the specific individuals who had impacted more, the result is shared between the players. The same logic is the foundation of Section 34 IPC which creates shared liability on those who shared the common intention to commit the crime.

23. The intendment of Section 34 IPC is to

remove the difficulties in distinguishing the acts of individual members of a party, acting in furtherance of a common intention. There has to be a simultaneous conscious mind of the persons participating in the criminal action of bringing about a particular result. A common intention qua its existence is a question of fact and also requires an act in furtherance of the said intention. One need not search for a concrete evidence, as it is for the court to come to a conclusion on a cumulative assessment. It is only a rule of evidence and thus does not create any substantive offence.

24. Normally, in an offence committed

physically, the presence of an accused charged under Section 34 IPC is required, especially in a case where the act attributed to the accused is one of instigation/exhortation. However, there are exceptions, in particular, when an offence consists of diverse acts done at different times and places. Therefore, it has to be seen on a case-to-case basis.

25. The word furtherance indicates the

existence of aid or assistance in producing an effect in future. Thus, it has to be construed as an advancement or promotion.

26. There may be cases where all acts, in

general, would not come under the purview of Section 34 IPC, but only those done in furtherance of the common intention having adequate connectivity. When we speak of intention it has to be one of criminality with adequacy of knowledge of any existing fact necessary for the proposed offence. Such an intention is meant to assist, encourage, promote and facilitate the commission of a crime with the requisite knowledge as aforesaid.

27. The existence of common intention is

> obviously the duty of the prosecution to prove. However, a court has to analyse and assess the evidence before implicating a person under Section 34 IPC. A mere common intention per se may not attract Section 34 IPC, sans an action in furtherance. There may also be cases where a person despite being an active participant in forming a common intention to commit a crime, may actually withdraw from it later. Of course, this is also one of the facts for the consideration of the court. Further, the fact that all accused charged with an offence read with Section 34 IPC are present at the commission of the crime, without dissuading themselves or others might well be a relevant circumstance, provided a prior common intention is duly proved. Once again, this is an aspect which is required to be looked into by the court on the evidence placed before it. It may not be required on the part of the defence to specifically raise such a plea in a case where adequate evidence is available before the court.

58. In Sunil v. State of NCT of Delhi, 2023 INSC 840, the

> Supreme Court further held as under: 28. In Balu alias Bala Subramaniam, this Court held: 11. To invoke Section 34 IPC, it must be established that the criminal act was done by more than one person in furtherance of common intention of all. It must, therefore, be proved that: (i) there was common intention on the part of several persons to commit a particular crime, and (ii) the crime was actually committed by them in furtherance of that common intention. The essence of liability under Section 34 IPC is simultaneous conscious mind of persons participating in the criminal action to bring about a particular result. Minds regarding the sharing of common intention gets satisfied when an overt act is established qua each of the accused. Common intention implies pre-arranged plan and acting in concert pursuant to the pre-arranged plan.

Common intention is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention. (Emphasis supplied)

After observing as above, in paragraph 15, it was observed: 15. Under Section 34 IPC, a pre- concert in the sense of a distinct previous plan is not necessary to be proved. The common intention to bring about a particular result may well develop on the spot as between a number of persons, with reference to the

facts of the case and circumstances of

the situation. The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. The totality of the circumstances must be taken into consideration in arriving at the con-clusion whether the accused had a common intention to commit an offence with which they could be convicted. (Emphasis Supplied)

29. What is clear from the decisions noticed

above is, that to fasten liability with the aid of Section 34 of the I.P.C. what must necessarily be proved is a common intention to commit the crime actually committed and each accused person can be convicted of that crime, only if it is in furtherance of common intention of all. Common intention pre-supposes a prior concert, though pre-concert in the sense of a distinct previous plan is not necessary as common intention to bring about a particular result may develop on the spot. The question whether there was any common intention or not depends upon the inference to be drawn from the proven facts and circumstances of each case. 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 with which they could be convicted.

59. In Constable 907 Surendra Singh & Anr. v. State of

Uttarakhand, 2025 INSC 114, the Supreme Court held as under: 18. By now it is a settled principle of law that for convicting the accused with the aid of Section 34 of the IPC the prosecution must establish prior meetings of minds. It must be established that all the accused had preplanned and shared a common intention to

commit the crime with the accused who has actually committed the crime. It must be established that the criminal act has been done in furtherance of the common intention of all the accused. Reliance in support of the aforesaid proposition could be placed on the following judgments of this Court in the cases of:

(i) Ezajhussain Sabdarhussain and another v.

State of Gujarat;

(ii) Jasdeep Singh alias Jassu v. State of

Punjab;

(iii) Gadadhar Chandra v. State of West

Bengal (supra); and

(iv) Madhusudan and others v. State of

Madhya Pradesh.

60. As far as exhortation is concerned, the Supreme Court in Jainul

Haque v. State of Bihar, (1974) 3 SCC 543, opined that exhortation, in the very nature of things, is a weak piece of evidence. It was held as under: 9. It would appear from the above that there is a clear discrepancy between the evidence of the witnesses given at the trial and the version given in the first information report regarding the part played by the appellant. The part attributed to the appellant according to the first information report is that he had exhorted the other accused to assault Leyaquat, while according to the evidence adduced at the trial the appellant actually joined in the assault on Leyaquat. The High Court did not accept the prosecution evidence on the point that the appellant had joined in the assault on Leyaquat. All the same, the High Court convicted the appellant because it was of the view that the appellant had exhorted the other accused to assault Leyaquat. In the absence of any substantive and cogent evidence adduced at the trial that the appellant had exhorted the other accused to assault Leyaquat, the High

Court, in our opinion, should not have convicted the appellant for the offence under Section 323 read with Section 114 of the Penal Code, 1860. The High Court has found the evidence of the eyewitnesses to be unsatisfactory. It has also found that the eyewitness were prone to exaggerate things and to involve as many accused as possible. In the circumstances it was, in our opinion, not safe to base the conviction of the appellant on the aforesaid evidence. The evidence of exhortation is, in the very nature of things, a weak piece of evidence. There is quite often a tendency to implicate some person, in addition to the actual assailant, by attributing to that person an exhortation to the assailant to assault the victim. Unless the evidence in this respect be clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted the actual assailant. The evidence

adduced at the trial in respect of the part alleged to have been played by the appellant is contradictory and far from convincing. We would, therefore, accept the appeal, set aside the conviction of the appellant and acquit him. (emphasis supplied)

61. In Matadin & Anr. v State of Maharashtra, (1998) 7 SCC 216,

the Supreme Court held that the use of the words Maro Sale Ko cannot by themselves imply the intention to kill. It was held as under: 11. The courts below have not found that the language which Matadin used exhorting his fellows was used in such a tone as to exhort them to kill Ashok or to cause grievous hurt to him by using dangerous weapons or means. When the words maro sale ko are used, it could mean to beat or even to kill a person. Though the witnesses have stated that these words were used by Matadin in an abusive way, but from that it could not be

said that he exhorted his fellows to kill Ashok. We, therefore, set aside the conviction and sentence of Matadin under Section 302 read with Section 34 IPC and instead convict him under Sections 324/110 IPC. It was stated before us that he has already undergone rigorous imprisonment for a period of one year and four months. We will sentence him to suffer rigorous imprisonment for the period already undergone by him and to fine. (emphasis supplied)

62. A reading of the above would show that to attract the provisions

of Section 34 of the IPC, it must be proved that: (i) there was common intention on the part of several persons to commit a particular crime; and (ii) the crime was actually committed by them in furtherance of that common intention. Additionally, exhortation on its own is treated as a weak piece of evidence as there may exist tendencies to implicate some persons in addition to the actual assailants, by attributing to such

persons a role of an exhortation to the assailant to assault the victim. Unless the evidence in this respect is clear, cogent and reliable, no conviction for abetment can be recorded against the person alleged to have exhorted to the actual assailant.

63. As per the case of the prosecution, three accused persons -

Charanjit, Balvinder and Shyam Lal were standing in the front of the bus, while the appellant was standing at the back of the bus. The three accused in the front of the bus were pulled up by the deceased and PW-11/Ashok for teasing PW-5/Usha and PW-7/Alka. It is then that accused-Balvinder took out a knife and attacked the deceased and PW-5/Usha, whereas accused-Charanjit took out another knife and

attacked PW-11/Ashok. The role attributed to the appellant is that he exhorted from the back of the bus Maro Sale Ko.

64. Admittedly, there was no prior enmity between the alleged

assailants and the eye-witnesses as also the deceased. It has also not been proved from the record that the appellant knew that his alleged co-assailants were carrying knives. Added to this are factors such as discrepancies between the testimonies of the eye-witnesses as to whether the alleged exhortation took place before or after accused-Balvinder is said to have stabbed the deceased. While PW-5/Usha, PW-6/Naginder Kumar and PW-7/Alka stated that the exhortation was heard prior to accused-Balvinder attacking the deceased, PW- 11/Ashok does not say so. PW-5/Usha has further stated that she did not tell the police that the exhortation had come from the back side of the bus. PW-6/Naginder Kumar has mentioned that he did not see the accused persons armed with knives when they were waiting at the bus stop or when they were talking standing behind the bus drivers seat.

65. Furthermore, although it is the case of the prosecution that the

appellant entered the bus from the back side, the bus conductor PW-13/Siripal Singh, who was also at the back side of the bus, near PW-6/Naginder Kumar, does not support the case of the prosecution in as much as he does not state that the appellant entered the bus. He also does not state that he heard any exhortation or witnessed the appellant attacking anyone.

66. Additionally, PW-7/Alka has stated that she could not see PW-

6/Naginder Kumar as he was at the back of the bus, however, she has interestingly been able to identify the appellant as one-Raju.

67. As noted above, we find that the use of the words Maro Sale

Ko by themselves also does not imply the intention to kill; they can also be attributed to the intention to hurt. Furthermore, as it is the admitted case of the prosecution that both PW-11/Ashok and the deceased had reprimanded the assailants standing in front of the bus, the exhortation of Maro Sale Ko could have been made for just beating the deceased. The entire incident has taken place in a short span of time. Interestingly, even the learned Trial Court has acquitted the appellant for the charge against him under Section 307 read with Section 34 of the IPC pertaining to alleged stabbing of PW-11/Ashok.

68. We, accordingly, find that the prosecution has not been able to

show that the appellant was sharing a common intention with accused-Balvinder who allegedly stabbed the deceased.

CONCLUSION

69. Basis the above, we find that the prosecution had been unable to

prove its case against the appellant beyond reasonable doubt. The appellant is entitled to be accorded the benefit of doubt. The learned Trial Court has erred in convicting the appellant.

70. The impugned orders dated 10.08.2004 and 19.08.2004 are,

therefore, set aside.

71. The appellant is acquitted of the Charge against him. His

personal bond and sureties are also discharged.

72. The appeal is allowed in the above terms.

73. A copy of this judgment be sent to the Jail Superintendent as

also the learned Trial Court for purposes of record.

NAVIN CHAWLA, J.

RAVINDER DUDEJA, J.

JUNE 18, 2026/ik

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