

**VASANT @ GIRISH
AKBARASAB SANVALE &
ANR.
VERSUS
THE STATE OF KARNATAKA
2025 Supreme Court**

Summary This case involves a murder appeal concerning the death of Geetha, who was allegedly set on fire by her mother-in-law, with questions about her husband's involvement and the application of Section 34 of the Indian Penal Code.

Case Background

Occurred on January 3, 2011. Geetha suffered 90% burn injuries. Died after one week in hospital. Cause of death was Septicemia from burn injuries

Prosecution's Case

Mother-in-law poured kerosene and set Geetha on fire. Harassment for dowry and domestic work. Incident happened around 8:00 PM at matrimonial home

Key Evidence:

- **Dying Declaration by Geetha. Recorded by Tehsildar wherein she Identified mother-in-law as perpetrator. Mentioned husband splashed water to extinguish fire.**

Trial Court:

- **Initially acquitted both appellants**
- **Found prosecution failed to prove case beyond reasonable doubt**

- **High Court:**

**Reversed trial court's decision,
Convicted mother-in-law and
husband**

Sentenced to life imprisonment.

Legal Principles Highlighted

- **Nuanced interpretation of Section 34 IPC**
- **Requirement of active participation in criminal act**
- . **Difference between section 149 IPC and section 34 IPC, also 34 vs criminal conspiracy and abetment.**
- **Burden of proof in criminal cases, section 106 IEA**

Supreme court observed, that nowhere the husband figures. It is only the mother-in-law, who

figures in the dying declaration as well as oral evidence of the Doctor and the Tehsildar. So why did the HC convicted him ?

What the High court reasoned?

The plain reading of para 30 referred to above would indicate that what weighed with the High Court in holding the husband-appellant guilty is the fact that he never bothered to take his wife to the hospital as he wanted to ensure that she does not survive. Therefore, according to the High Court, the husband could be said to be guilty having shared common intention with his mother.

Section 34 of the IPC reads thus:-

“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.*”

Om Prakash v. State reported in 1956 CrLJ 452. Justice M.H. Beg (as His Lordship then was) has beautifully explained the provision and its applicability.

39. In order that an intention should be common, it should be attributable to every member of the group. This is also clarified by the fact that the section itself characterises the common

intention to be the 'common, intention of all'. Section 34, IPC, therefore, does not ignore the intention of the individual offender.

41. The common intention required under Section 34 Penal Code need not, however, be identical with the guilty intention or 'mens rea' which is the ingredient of the offence and is to be distinguished from it. The latter might be coincident with or collateral to the former.

42. On the other hand, the position under Section 149, IPC, is very different. The charge framed under Section 149, IPC, disregards the intention of the individual members of the assembly

altogether, and concentrates merely on the common object of the assembly as a whole. The result of this position is that there may be cases in which a person might be guilty of an offence under Section 149, IPC though he himself had no intention to commit it or was even unaware of its commission.

43. There may even be cases where a person might be found guilty of an offence under Section 149 though it was committed quite contrary to his own intention.

Supposing for instance, an unlawful assembly is formed with the object of wiping out all members of a particular community residing in a mohalla. While this assembly is busy in its unlawful activities, some of its

members might come across a member of the other community and might in prosecution of the common object proceed to murder him.

44. But a particular individual, say X, who is a member of this very unlawful assembly might discover that Y was his old friend. X might not want that this old friend of his should be killed, and in spite of his wishes, and contrary to his intention, Y might be murdered.

45. If it so happens, then X who was a member of the unlawful assembly, might be held to be guilty of an offence committed by another member of the said assembly, even though the offence itself was committed quite contrary to his desires and even in opposition to his own intention

provided it is shown that X continued to remain a member of the assembly at the time of the offence and the offence itself was directly or indirectly within the purview of the common object of the assembly.

AIR 1925 PC 1 (C) thus: "There is a difference between object and intention, for, though their object is common, the intentions of the several members, may differ and indeed may be similar only in respect that they are all unlawful, while the element of participation in action which is the leading feature of S. 34, is replaced in S. 149 by membership of the assembly at the time of the committing of the offence"

51. Participation of the individual offender in the criminal act in some form or the other which is the leading feature of Section 34, IPC differentiates it not only from Section 149, IPC, but also from other affiliated offences like criminal conspiracy and abetment.

A bare agreement between two or more persons to do or cause to be done an illegal act might make a person liable for the offence of criminal conspiracy as defined in Section 120, IPC. If the said agreement is to commit offence, then such an agreement is by itself enough to make a man guilty and no overt act apart from the agreement would be necessary.

52. If, however, the agreement is to commit an act which is not tantamount to an offence, then some overt act in pursuance

thereof is necessary. Such overt act may, however, be performed by any person who is a party to the agreement and not necessarily by the particular accused who might be guilty of the offence without having participated in the act.

verses

53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the accused himself has in some way or the other participated in the commission of the said act.

With abetment

54. The offence itself would be complete even though the act abetted is not committed; or, even if the act is committed, the abettor himself has not participated in it. Thus, actual participation in the commission of the offence, which is a condition precedent of Section 34 and is its main feature, again distinguishes it from the offence of abetment.

Case of a bystander

A person present on the scene might or might not be guilty by the application of Section 34, IPC. If he is present on the scene for the purpose of participating in the offence, he would certainly be guilty as a participator in the offence.

On the other hand, if he is present there merely as a spectator, he would not be guilty.

Thus, for example a person who is an eyewitness of the incident is present at the spot as well as a person who is a confederate of the assailant. The former is not guilty because he is present merely to see the commission of the crime. On the other hand, the latter is guilty because he is present for the purpose of seeing that the crime is committed. In other words, presence on the spot for the purpose of facilitating or promoting the offence is itself tantamount to actual participation in the criminal act.

Barendra Kumar Ghosh v. Emperor, AIR 1925 PC 1 (C), "It is to be remembered that in crimes as in other things 'they also serve who only stand and wait'"

64. The word 'criminal act' is used in Section 34, IPC in the broadest possible sense. It would cover any word, gesture, deed or conduct of any kind on the part of a person whether active or passive, which tends to support the common design.

65. A 'criminal act' in Section 34, IPC consists of the entire bundle of acts or omissions tied together with the chain of common intention that have combined to constitute the offence. The acts that it might comprise within itself may be similar or diverse.

for example two persons may conspire to kill a third man. One may know him and the other may not know him.

70. It may be agreed between the two that the person who knows him will stand near the man who would be the victim and thereby enable the person to whom the part of killing is assigned to identify the victim. If the scheme is carried out, both would be guilty under Section 34, IPC, even though the man who stood near the victim was merely present on the spot and apparently did nothing. If, however, the scheme is analysed, it would appear that by his presence near the victim he played a very important part.

for example, a person who is employed as a sentinel to guard the room of the deceased might agree with the murderer to allow him entry into the room with a view to enable him to accomplish the murderous deed.

Thus, if two persons conspire to commit theft and devise a plan according to which one of them would lure the shopkeeper away to an adjoining room on the pretext of having conversation with him thereby leaving the shop unprotected in order to enable the other persons to commit theft and the scheme is executed according to the plan, both of them would be equally guilty of theft by the application of the provisions of Section 34, IPC although their

respective acts are of a very different type.

74. In such a case, although only one man has committed the actual theft and the other has done nothing except entering into a friendly chat with the shopkeeper with a view to secure his removal from the scene, yet the part played by the latter is no less important than that of the former.

In Shreekantiah Ramayya Munipalli v. State of Bombay, (S) AIR 1955 SC 287 (E) while expounding the meaning of Section 34, IPC Bose, J. observed as follows:—

**At page 294, col. (1) of the same judgment it is observed that:—
“The emphasis in S. 34 is on the word ‘done’. When a criminal act is**

'done' by several persons, it is essential that they join in the actual 'doing' of the act and not merely in planning its perpetration".

As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes

prior concert therefore there must be meeting of mind.

106. Burden of proving fact especially within knowledge.

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling in a railway without a ticket. The burden of proving that he had a ticket is on him.

Section 106 of the Evidence Act was also pressed into service by

Mr. Singhvi appearing for the State. We are of the view that it has no application in the present case. It is true that when crime is alleged to have been committed inside the four walls of the house and that too in secrecy then the family members residing in the house are the best persons to know and explain as to what had actually happened.

Let us for the time being proceed on the footing that the husband was very much present at the time of the incident however there is nothing to indicate that he shared common intention with his mother. When the mother-in-law poured kerosene on the deceased and set her on fire, it is possible that the husband out of sheer fright might have run away from

his house after trying to extinguish fire by pouring water on the burning body of his wife. For applicability of Section 106 so as to implicate the husband also in the alleged crime the prosecution has to as a condition precedent lay the foundational facts prima facie indicating his involvement or participation in the alleged crime. His sudden disappearance after the incident is not sufficient to infer common intention.

92. In the overall view of the matter, we have reached the conclusion that the High Court rightly held the mother-in-law guilty of the alleged crime.

However, the High Court at the same time committed an error in holding the husband-appellant no.1 guilty of the offence of

**murder with the aid of Section 34
IPC.**

**We have reached the conclusion
that there is no cogent and
reliable evidence to hold the
husband-appellant guilty of the
alleged offence even with the aid
of Section 34 of the IPC.**

Final Verdict

- **Outcome:**
- **Mother-in-law's conviction
confirmed**
- **Husband acquitted**
- **Husband to be released
immediately if no other cases
pending Key**

