A RAGHBIR CHAND & ORS.

v.

STATE OF PUNJAB

(Criminal Appeal No. 2028 of 2009)

AUGUST 05, 2013

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[P. SATHASIVAM, CJI. AND RANJAN GOGOI, JJ.]

Penal Code, 1860:

C *ss. 302, 324 and 323 r/w. s. 34 – Prosecution under – Of 4 accused – 3 injured eye-witnesses to the incident – Conviction by courts below – On appeal, held: The prosecution case is established by the evidence of injured eye-witnesses which was corroborated by medical evidence* D *– Conviction of all the accused u/ss. 324 and 323 r/w. s. 34 is affirmed – But as regards conviction u/s. 302/34, in the facts of the case, accused No.4 alone can be held responsible for the death of the deceased and not accused Nos. 1, 2 and 3 – Hence, conviction of accused No. 4 u/s. 302 is affirmed and conviction of accused Nos. 1, 2 and 3 is set aside.*

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s. 34 – Liability under – Invocation of – Held: Liability u/s. 34 is a matter of inference to be drawn from the facts and circumstances of each case.

F **Appellants-accused (accused Nos. 1, 2, 3 and 4) were charged u/ss. 302, 324 and 323 r/w. s. 34 IPC. The prosecution case was that the accused assaulted PWs 2 and 4 (brothers) and when during the assault, their brothers (PW 5 and the deceased) came to their rescue,** G **they were also assaulted. The deceased, the eye-witnesses (PWs 2, 4 and 5) as well as the accused Nos. 1, 2 and 3 were medically examined. The trial court convicted the accused u/ss. 302, 324 and 323 r/w. s. 34 IPC and sentenced them to life imprisonment for the**

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offence u/s. 302 and for 2 years and 1 year RI for the offences u/ss. 324 and 323 respectively. High Court confirmed their conviction. Hence the present appeal. A

Partly allowing the appeal, the Court

HELD: 1. The evidence of PWs 2, 4 and 5, i.e. the injured eye-witnesses, appear to be consistent and have remained largely unshaken in cross-examination. The aforesaid 3 witnesses have clearly and categorically narrated the sequence of events alleged by the prosecution and the assault committed by the accused persons on them as well as on the deceased with the weapons that they were armed with. The evidence of PWs 2, 4 and 5 stands fully corroborated by the evidence of PW-1 who found as many as 4 punctured injuries in the abdomen of the deceased and also lacerated and incised injuries on PWs 2, 4 and 5. Taking into account the consistency in the version of the injured witnesses and the corroboration of their testimonies by the medical evidence of PW-1, it can be safely held that the incident as narrated by the prosecution had taken place and the involvement of the accused persons, as alleged, have been duly proved. [Para 4] [750-D-G] B C D E

2. Common intention which is the gist of the principle of vicarious liability enshrined by Section 34 of the Penal Code can be the result of a premeditated decision between several co-accused or in a given case such common intention can very well develop on the spur of the moment or at the scene of the crime. What is of importance and, therefore, must be ascertained is the meeting of minds of the co-accused that the particular criminal act should be committed. Once the court can consider it safe to come to such a conclusion only then apportionment of liability amongst the co-accused would be permissible with the aid of Section 34 of the Penal Code. Liability of an accused under Section 34, therefore, F G H

A **is a matter of inference to be drawn from the facts and circumstances of each case. [Para 8] [752-D-F]**

Sripathi vs. State of Karnataka **(2009) 11 SCC 660: 2009 (5) SCR 309;** *Abdul Mannan vs. State of Assam* **(2010) 3 SCC 381: 2010 (2) SCR 1030;** *Abdul Sayeed vs. State of* B *M.P.* **(2010) 10 SCC 259: 2010 (13) SCR 311– relied on.**

3. The facts of the case cannot constitute a safe and sufficient basis to come to the conclusion that an inference of common intention of all the four accused to C **cause the death of the deceased can be safely made so as to hold the accused 1, 2 and 3 vicariously liable for the death of the deceased. Therefore, the conviction of the accused-appellants 1, 2 and 3 under Section 302 read with section 34 requires interference. Accordingly, the** D **said conviction and sentence imposed on the accused-appellants No. 1, 2 and 3 is set aside. However, the evidence of PWs 2, 4 and 5 having established the assault on the injured eye-witnesses by the aforesaid accused–appellants 1, 2 and 3 hence the conviction of the said** E **appellants under Section 324 read with Section 34 and Section 323 should be maintained. Therefore, the said part of the judgment of the High Court along with the sentences imposed is affirmed. [Para 9] [759-D-G]**

4. There can be no manner of doubt that the death F **of the deceased was occasioned by the assault committed by the accused-appellant No.4 in the abdominal region of the deceased with a knife. A person inflicting 4-5 knife blows on a vital part of the body i.e. abdomen cannot but be attributed with the requisite** G **intention to cause death or alternatively with the intention of causing such bodily injury as is likely to cause the death of the victim. [Para 12] [762-D-H]**

5. While there can be no doubt that the assault on the H **deceased was committed without any pre-meditation and**

also in a sudden fight and even if it is assumed that the said act was in the heat of passion, what cannot be lost sight of is the infliction of 4-5 knife blows in the abdominal region of the deceased. Had the appellant No. 4 dealt a single blow on the deceased, perhaps, it would have been open for this Court to seriously consider the applicability of the latter part of the 4th exception to Section 300 to the present case, namely, that the appellant had not taken undue advantage or had not acted in a cruel or unusual manner. In the present case, no such conclusion can be reasonably reached in view of the repeated blows inflicted by accused-appellant No. 4 on a vital part of the body of the deceased. In the facts and circumstances of the case, the correct conclusion would be that the accused-appellant No. 4 had the requisite intention if not of causing death, at least, of causing such bodily injury which was likely to cause death. The acts attributable to the accused-appellant No.4 do not also attract any of the exceptions enumerated under Section 300 IPC. Therefore, the conviction and the sentence of the accused-appellant No. 4 under Section 302 is affirmed. Insofar as the conviction of the said accused-appellant for the offences under Sections 324 and 323 read with Section 34 is concerned, the same is also affirmed. [Para 12] [763-B-G]

State of Andhra Pradesh vs. Rayavarapu Punnayya and Anr. **(1976) 4 SCC 382: 1977 (1) SCR 601;** *Ghelabhai Jagmalbhai Bhawad and Ors. vs. State of Gujarat* **(2008) 17 SCC 651 – relied on.**

Case Law Reference:

2009 (5) SCR 309	**relied on**	**Para 8**
2010 (2) SCR 1030	**relied on**	**Para 8**
2010 (13) SCR 311	**relied on**	**Para 8**

A **1977 (1) SCR 601 relied on Para 11**

(2008) 17 SCC 651 relied on Para 11

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2028 of 2009.

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From the Judgment & Order dated 28.03.2008 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 35-DB of 1999.

C K.L. Janjani, Raj Singh Rana, Pankaj Kumar Singh, Ankit Gaur, Avinash Jain for the Appellants.

V. Madhukar AAG, Kuldip Singh for the Respondent.

The Judgment of the Court was delivered by

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RANJAN GOGOI, J. 1. Aggrieved by the affirmation of the conviction and sentence of the appellants made by the High Court of Punjab & Haryana this appeal has been filed upon grant of special leave under Article 136 of the Constitution. Specifically, the appellant No. 4 Kamal Kumar has been convicted under Section 302, Section 324 and Section 323 read with Section 34 of the Indian Penal Code. He has been sentenced to undergo RI for life for the offence under Section 302 IPC whereas for the offences under Sections 324 and 323/ 34 IPC he has been sentenced to undergo RI for 2 years and 1 year respectively. Insofar as appellants 1, 2 and 3 are concerned, they have been found guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code and sentenced to undergo RI for life. The aforesaid accused appellants have also been found guilty of the offences under Section 324 read with Section 34 and Section 323 of the Indian Penal Code and have been sentenced to undergo RI for 2 years and 1 year respectively.

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2. The prosecution case, which has been held to be established by the learned courts below, is to the effect that on

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14.1.1991 at about 7.00 a.m. when PW-2 Ram Singh and PW-4 Surinder Kumar (brothers) had gone to the fields to answer the call of nature, in front of the house of the appellant No. 1 Raghbir Chand, the four accused persons had assembled. According to the prosecution, while the appellant No.1, Raghbir Chand, was armed with a Dang, appellant No.2, Varinder Kumar, was armed with an iron rod whereas appellants 3 and 4, Vijay Kumar and Kamal Kumar, were armed with an iron fork and a knife respectively. According to the prosecution, appellant No. 1 Raghbir Chand exhorted the other accused that PW-2 Ram Singh and PW-4 Surinder Kumar should be taught a lesson for having abused the appellant Raghbir Chand the previous evening. Thereupon, according to the prosecution, appellant No. 2 Varinder Kumar gave a blow from the iron rod in his hand which was aimed at the head of PW-4 Surinder Kumar. Appellant No. 4 Kamal Kumar is alleged to have given a knife blow on the left flank of PW-4 whereas appellant No. 1 Raghbir Chand, it is alleged, gave a dang blow on the right elbow of PW-2 Ram Singh. It is further alleged that appellant No. 4 Kamal Kumar gave a knife blow on the head of PW-2 Ram Singh. The further case of the prosecution is that at this stage deceased Rajinder Kumar and PW-5 Sushil Kumar (brothers of PW-2 and PW-4) came to the place of occurrence whereupon the appellant No. 4 gave 4-5 knife blows in the abdomen of deceased Rajinder Kumar who fell down on the ground. The prosecution had further alleged that appellant No. 3 Vijay Kumar gave blows from the iron fork on the forehead of PW-5 Sushil Kumar whereas appellant no.1 Raghbir Chand gave fist blow on the left eye of PW-5. Appellant No. 2 Varinder Kumar is alleged to have assaulted PW-5 Sushil Kumar on the left leg with the iron rod. Thereafter, according to the prosecution, the appellants left the spot alongwith their weapons. The injured were reportedly taken to the Civil Hospital, Pathankot from where Rajinder Kumar was referred to S.G.T.B. Hospital Amritsar. However, Rajinder Kumar died on the way to the hospital at Amritsar on 14.1.1991.

A acceptable. We will, therefore, have to proceed on the basis that the said appellant had inflicted 4-5 knife blows on the abdomen of the deceased. Learned counsel for the appellant has contended that even if the said evidence is accepted in its entirety no offence under Section 302 IPC
B is made out against the 4th accused-appellant. In this regard, learned counsel for the appellants has tried to persuade us that in the totality of the facts of the present case, the 4th exception to Section 300 IPC would come into operation so as to make the said appellant liable to
C the lesser offence under Section 304 IPC. The 4th exception to Section 300 IPC is in the following terms:

"Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the
D heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation – It is immaterial in such cases which party offers the provocation or commits the first assault."
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11. A decision of this Court of somewhat old vintage (*State of Andhra Pradesh Vs. Rayavarapu Punnayya & Anr.*[4]) may be re-noticed to remember what would be the correct approach in dealing with the question whether an offence is murder or
F culpable homicide not amounting to murder. The following passages from the aforesaid decision may be usefully noticed hereunder:

"21. From the above conspectus, it emerges that whenever
G a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the

H 4. (1976) 4 SCC 382.

34 of the Indian Penal Code is legally unsustainable. Insofar as appellant No. 4 Kamal Kumar is concerned, learned counsel has urged that the facts proved and established, at best, would go to show the commission of the offence under Section 304 Part I and not the offence under Section 302 IPC. The injuries suffered by the accused-appellants 1, 2 and 3 as proved by PW-1 have also been highlighted by the learned counsel to contend that a mutual fight between the parties had occurred. Learned counsel has further pointed out that while the appellant No.1, Raghbir Chand, had served a period of nearly 2-1/2 years in custody, the appellants 2 and 3 have undergone over 7 years of custody whereas appellant No. 4 is in jail for more than 10 years.

6. Mr. V. Madhukar, learned Addl. Advocate General appearing for the State of Punjab on the other hand submits that the evidence of PWs 2, 4 and 5 clearly establishes that the accused-appellants were acting in concert and one of the victims of the crime Rajinder Kumar had died in the course of the incident. According to learned counsel, there is no way as to how the appellants can escape their liability under Section 34 of the Indian Penal Code. Learned counsel has also pointed out that the injuries suffered by the accused-appellants, as evident from the deposition of PW-1, are superficial and the same being capable of being self-inflicted, the Court has to understand the said injuries in the above manner.

7. A close reading of the evidence of the injured eye witnesses makes it clear that on the day of occurrence while PW-2 Ram Singh and PW-4 Surinder Kumar were going to the fields to answer the call of nature they were accosted by the four accused-appellants who assaulted them with the different weapons in their possession. While the aforesaid assault was being committed the deceased and PW-5 Sushil Kumar came to the spot to rescue their brothers PW-2 Ram Singh and PW-4 Surinder Kumar. It was at this point of time that the appellant No. 4 Kamal Kumar inflicted 4-5 knife blows in the abdomen

A of the deceased which eventually led to his death. The evidence of prosecution witnesses would go to show that after the deceased had fallen to the ground while the other appellants had assaulted PW-5 Sushil Kumar none of them had committed any assault on Rajinder Kumar, i.e., the deceased who was lying
B on the ground. The evidence on record would also go to show that the deceased was initially treated in the Civil Hospital at Pathankot by PW-1 Dr. R.K. Khanna and was thereafter referred to the S.G.T.B. Hospital, Amritsar on the same day. The evidence of Dr. N.K. Aggarwal PW-6 indicate that in the
C course of postmortem stitch wounds were found on the person of the deceased. The said fact would show that the deceased had received surgical treatment while he was in the Civil Hospital, Pathankot.

D 8. Common intention which is the gist of the principle of vicarious liability enshrined by Section 34 of the Indian Penal Code can be the result of a premeditated decision between several co-accused or in a given case such common intention can very well develop on the spur of the moment or at the scene
E of the crime. What is of importance and, therefore, must be ascertained is the meeting of minds of the co-accused that the particular criminal act should be committed. Once the court can consider it safe to come to such a conclusion only then apportionment of liability amongst the co-accused would be
F permissible with the aid of Section 34 of the Indian Penal Code. Liability of an accused under Section 34, therefore, is a matter of inference to be drawn from the facts and circumstances of each case. The above are the principles that have been laid down in a long line of decisions of this Court, few of which can
G be illustratively referred to hereinbelow.

This Court in the case of *Sripathi v. State of Karnataka*[1] observed as under:

H 1. (2009) 11 SCC 660.

9. "5. Section 34 has been enacted on the principle of joint liability in the [commission] of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was a plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of Section 34, be it prearranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true contents of the section are that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in *Ashok Kumar* v. *State of* Punjab [1977 (1) SCC 746] the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

6. The section does not say 'the common intentions of all' nor does it say 'an intention common to all'. Under the provisions of Section 34 the essence of the liability is to be found in the existence of a common intention

A animating the accused leading to the [commission] of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted under Section 302 read with Section 34, in law it means that the accused is liable for
B the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to
C prove exactly what part was taken by each of them. As was observed in *Chinta Pulla Reddy* v. *State of A.P.* [1993 (Supp 3) SCC 134] Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some
D overt act on the part of the accused." [As observed in *State of M.P.* v. *Deshraj*, (2004) 13 SCC 199]

In *Abdul Mannan v. State of Assam*[2] in paragraphs 19 and 20 this Court made the following observations :

E **"19.** The High Court placed reliance on *Sheoram Singh v. State of U.P.*[(1973) 3 SCC 110] in which this Court observed as under: (SCC p. 114, para 6)

"*6.* ... It is undeniable that common intention can
F develop during the course of an occurrence, but there has to be cogent material on the basis of which the court can arrive at that finding and hold an accused vicariously liable for the act of the other accused by invoking Section 34 of the Penal Code."

G **20.** Reliance was also placed on *Joginder Singh* v. *State of Haryana* [AIR 1994 Supreme Court 461] in which this Court has observed:

H 2. (2010) 3 SCC 381.

"7. It is one of the settled principles of law that the common intention must be anterior in time to the commission of the crime. It is also equally settled law that the intention of the individual has to be inferred from the overt act or conduct or from other relevant circumstances. Therefore, the totality of the circumstances must be taken into consideration in order to arrive at a conclusion whether the accused had a common intention to commit the offence under which they could be convicted. The prearranged plan may develop on the spot. In other words, during the course of commission of the offence, all that is necessary in law is, the said plan must proceed to act constituting the offence."

Taking into consideration all the previous decisions, this Court in *Abdul Sayeed v. State of M.P.*[3] summed up the law in the following terms:

"48. The aforesaid conclusion takes us to the issue raised by the appellants as to whether the appellants could be convicted with the aid of Section 34 IPC.

49. Section 34 IPC carves out an exception from general law that a person is responsible for his own act, as it provides that a person can also be held vicariously responsible for the act of others if he has the "common intention" to commit the offence. The phrase "common intention" implies a prearranged plan and acting in concert pursuant to the plan. Thus, the common intention must be there prior to the commission of the offence in point of time. The common intention to bring about a particular result may also well develop on the spot as between a number of persons, with reference to the facts of the case and circumstances existing thereto. The common intention under Section 34 IPC is to be understood in a different

3. (2010) 10 SCC 259.

A sense from the "same intention" or "similar intention" or "common object". The persons having similar intention which is not the result of the prearranged plan cannot be held guilty of the criminal act with the aid of Section 34 IPC. (See *Mohan Singh v. State of Punjab [AIR 1963 SC 174.*)

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50. The establishment of an overt act is not a requirement of law to allow Section 34 to operate inasmuch this section gets attracted when a criminal act is done by several persons in furtherance of the common intention of all. What has, therefore, to be established by the prosecution is that C all the persons concerned had shared a common intention. (Vide *Krishnan v. State of Kerala* [1996 (10) SCC 508] and *Harbans Kaur v. State of Haryana* [2005 (9) SCC 195)

D **51.** Undoubtedly, the ingredients of Section 34 i.e. that the accused had acted in furtherance of their common intention is required to be proved specifically or by inference, in the facts and circumstances of the case. (Vide *Hamlet v. State of Kerala [2003 (10) SCC 108), Pichai* E *v. State of T.N.* [2005 (10) SCC 505] and *Bishna* v. *State of W.B. [2005 (12) SCC 657*)

52. In *Gopi Nath v. State of U.P.* [2001 (6) SCC 620] this Court observed as under:

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"*8.* ... Even the doing of separate, similar or diverse acts by several persons, so long as they are done in furtherance of a common intention, render each of such persons liable for the result of them all, as if he had done them himself, for the whole of the criminal action—be it that G it was not overt or was only a covert act or merely an omission constituting an illegal omission. The section, therefore, has been held to be attracted even where the acts committed by the different confederates are different when it is established in one way or the other that all of

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them participated and engaged themselves in furtherance of the common intention which might be of a preconcerted or prearranged plan or one manifested or developed on the spur of the moment in the course of the commission of the offence. The common intention or the intention of the individual concerned in furtherance of the common intention could be proved either from direct evidence or by inference from the acts or attending circumstances of the case and conduct of the parties. The ultimate decision, at any rate, would invariably depend upon the inferences deducible from the circumstances of each case."

53. In *Krishnan v. State [2003 (7) SCC 56]* this Court observed that applicability of Section 34 is dependent on the facts and circumstances of each case. No hard-and-fast rule can be made out regarding applicability or non-applicability of Section 34.

54. In *Girija Shankar v. State of U.P. [2004 (3) SCC 793]* it is observed that Section 34 has been enacted to elucidate the principle of joint liability of a criminal act:

"9. Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. *Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances.*"

55. In *Virendra Singh v. State of M.P. [2010 (8) SCC 407]*

A this Court observed that:

"*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 B 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 C 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 D 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 E section read with Section 34."

56. Section 34 can be invoked even in those cases where some of the co-accused may be acquitted, provided it can be proved either by direct evidence or inference that the accused and the others have committed an offence in F pursuance of the common intention of the group. (Vide *Prabhu Babaji Navle v. State of Bombay [AIR 1956 SC 51]*)

57. Section 34 intends to meet a case in which it is not G possible to distinguish between the criminal acts of the individual members of a party, who act in furtherance of the common intention of all the members of the party or it is not possible to prove exactly what part was played by each of them. In the absence of common intention, the H criminal liability of a member of the group might differ

according to the mode of the individual's participation in the act. Common intention means that each member of the group is aware of the act to be committed." A

9. In the present case, as already noticed, deceased Rajinder Kumar had arrived at the spot after the incident of assault by the accused on PW-2 and PW-4 had commenced. Immediately on arrival of Rajinder Kumar, appellant No. 4 Kamal Kumar, according to the prosecution, gave 4-5 blows in the abdomen of the deceased as a result of which he fell down. The prosecution evidence also demonstrates that after the deceased had fallen down on the ground none of the other accused-appellants had assaulted him. The above facts, in our considered view, cannot constitute a safe and sufficient basis for us to come to the conclusion that an inference of common intention of all the four accused to cause the death of Rajinder Kumar can be safely made so as to hold the accused 1, 2 and 3 vicariously liable for the death of Rajinder Kumar. We, therefore, are of the opinion that the conviction of the accused-appellants 1, 2 and 3 under Section 302 read with section 34 requires interference. We, accordingly, set aside the said conviction and sentence imposed on the accused-appellants No. 1, 2 and 3. However, the evidence of PWs 2, 4 and 5 having established the assault on the injured eye witnesses by the aforesaid accused–appellants 1, 2 and 3 we are of the view that the conviction of the said appellants under Section 324 read with Section 34 and Section 323 should be maintained. We, therefore, affirm the said part of the judgment of the High Court along with the sentences imposed. B C D E F G

10. This will take us to a consideration of the case of the appellant No. 4 Kamal Kumar. The evidence of PWs 2, 4 and 5 has already been held by us to be credible and H

A acceptable. We will, therefore, have to proceed on the basis that the said appellant had inflicted 4-5 knife blows on the abdomen of the deceased. Learned counsel for the appellant has contended that even if the said evidence is accepted in its entirety no offence under Section 302 IPC
B is made out against the 4th accused-appellant. In this regard, learned counsel for the appellants has tried to persuade us that in the totality of the facts of the present case, the 4th exception to Section 300 IPC would come into operation so as to make the said appellant liable to
C the lesser offence under Section 304 IPC. The 4th exception to Section 300 IPC is in the following terms:

"Exception 4- Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the
D heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Explanation – It is immaterial in such cases which party offers the provocation or commits the first assault."

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11. A decision of this Court of somewhat old vintage (*State of Andhra Pradesh Vs. Rayavarapu Punnayya & Anr.*[4]) may be re-noticed to remember what would be the correct approach in dealing with the question whether an offence is murder or
F culpable homicide not amounting to murder. The following passages from the aforesaid decision may be usefully noticed hereunder:

"21. From the above conspectus, it emerges that whenever
G a court is confronted with the question whether the offence is 'murder' or 'culpable homicide not amounting to murder,' on the facts of a case, it will be convenient for it to approach the problem in three stages. The question to be considered at the first stage would be, whether the

H 4. (1976) 4 SCC 382.

accused has done an act by doing which he has caused the death of another. Proof of such causal connection between the act of the accused and the death, leads to the second stage for considering whether that act of the accused amounts to "culpable homicide" as defined in Section 299. If the answer to this question is prima facie found in the affirmative, the stage for considering the operation of Section 300, Penal Code is reached. This is [the stage at which the Court should determine whether the facts proved by the prosecution bring the case within the ambit of any of the four Clauses of the definition of murder' contained in Section 300. If the answer to this question is in the negative the offence would be 'culpable homicide not amounting to murder', punishable under the first or the second part of Section 304, depending, respectively, on whether the second or the third Clause of Section 299 is applicable. If this question is found in the positive, but the case comes, within any of the Exceptions enumerated in Section 300, the offence would still be 'culpable homicide not amounting to murder', punishable under the First Part of Section 304, Penal Code.

22. The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so inter-twined and the second and the third stages so telescoped into each other, that it may not be convenient to give a separate treatment to the matters involved in the second and third stages."

It appears that the aforesaid view in *Rayavarapu Punnayya* (supra) has been reiterated in *Ghelabhai Jagmalbhai Bhawad & Ors. Vs. State of Gujarat*[5] wherein it is observed thus:

"6. Murder is considered to be an aggravated form of

5. (2008) 17 SCC 651.

A culpable homicide and to render it a murder the case must come within the four clauses of Section 300. Consequently, it needs consideration at the threshold as to whether any of the accused has done any act by which he has caused the death of another person. Incidentally, it requires a B consideration as to whether such act(s) amounted to culpable homicide, as envisaged under Section 299. If the evidence on record could evoke a positive answer in affirmation, the stage for consideration of the applicability or otherwise of Section 300 in the light of the clauses C elucidating the offence as well as the exceptions engrafted therein arise. If the facts proved by the prosecution do not satisfy any one of the clauses contained in Section 300, it would only be a case of culpable homicide not amounting to murder, punishable under Section 304, the further D question as to under which part of the said provision depending upon the nature of evidence and the necessary ingredients proved to attract one or the other clauses of Section 300 is satisfied, yet if the evidence could establish that the case falls under any one of the exceptions still the offence said to have been committed would only be E culpable homicide not amounting to murder punishable under Section 304 of the Penal code. Thus, culpable homicide will not also amount to murder if the case falls within any of the exceptions in Section 300 and only by such process of reasoning and elimination, a case for F murder can be held proved."

12. We have given our anxious consideration to the contention raised on behalf of the accused-appellant. There can be no manner of doubt that the death of Rajinder Kumar was G occasioned by the assault committed by the accused-appellant No.4 in the abdominal region of the deceased with a knife. A person inflicting 4-5 knife blows on a vital part of the body i.e. abdomen cannot but be attributed with the requisite intention to cause death or alternatively with the intention of causing such H bodily injury as is likely to cause the death of the victim. Having

reached the aforesaid conclusion, the next question that has to be determined is whether the act of the accused-appellant will come under any of the exceptions enumerated under Section 300, particularly the 4th exception, as contended by the learned counsel for the appellant. While there can be no doubt that the assault on the deceased was committed without any premeditation and also in a sudden fight and even if it is assumed that the said act was in the heat of passion, what cannot be lost sight of is the infliction of 4-5 knife blows in the abdominal region of the deceased. Had the appellant No. 4 dealt a single blow on the deceased, perhaps, it would have been open for us to seriously consider the applicability of the latter part of the 4th exception to Section 300 to the present case, namely, that the appellant had not taken undue advantage or had not acted in a cruel or unusual manner. In the present case, no such conclusion can be reasonably reached in view of the repeated blows inflicted by accused-appellant No. 4 on a vital part of the body of the deceased. Having carefully weighed the facts and circumstances of the case and the options and conclusions that the said facts would reasonably admit, we are of the opinion that the correct conclusion in the present case would be that the accused-appellant No. 4 had the requisite intention if not of causing death, at least, of causing such bodily injury which was likely to cause death. The acts attributable to the accused-appellant No.4 do not also attract any of the exceptions enumerated under Section 300 IPC. We, therefore, affirm the conviction and the sentence of the accused-appellant No. 4 under Section 302. Insofar as the conviction of the said accused-appellant for the offences under Sections 324 and 323 read with Section 34 is concerned, we will have no hesitation in affirming the same.

13. Consequently, the appeal is partly allowed. The conviction of appellants No. 1, 2 and 3 under Section 302 read with Section 34 IPC is set aside while their conviction under Section 324 with the aid of Section 34 IPC and Section 323

A and the sentences imposed upon them are maintained. The conviction of the appellant No. 4 under Sections 302 and 324 and 323/34 IPC as well as the sentences imposed are maintained. If the accused-appellants 1, 2 and 3 have already undergone the sentence imposed on them for the offences
B under Section 324 read with Section 34 IPC and Section 323 IPC they be set at liberty unless their custody is required in connection with any other case.

K.K.T. Appeal Partly allowed.