Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1739 OF 2007

Thoti Manohar ....Appellant

Versus

State of Andhra Pradesh ....Respondent

SUPREME COURT OF INDIA

J U D G M E N T

DIPAK MISRA, J.

यतो धर्मस्ततो जयः

The present appeal, by special leave under Article 136 of the Constitution of India, is directed against the judgment of conviction and order of sentence dated 6.3.2007 passed by the High Court of Judicature, Andhra Pradesh at Hyderabad in Criminal Appeal No. 603 of 2005 whereby the Division Bench of the High Court partly allowed the appeal by acquitting the accused No. 3 (A-3), namely, Thoti Sivaram, for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for short 'the IPC') but maintained the

JUDGMENT

conviction and sentence in respect of other offences as had been imposed by the learned Sessions Judge, Chittoor in Sessions Case No. 108 of 2003. Be it noted, the accused No. 1 (A-1) was convicted for the offences punishable under Sections 452, 302, 326 and 324 of the IPC, the accused No. 2 (A-2) was found guilty of the offences under Sections 452, 302 read with 34, and 324 and 326 of the IPC, and the accused No. 3 (A-3) was convicted under Sections 452, 302 read with Section 34, and 324 of the IPC and, accordingly, sentenced to rigorous imprisonment and fine which we shall state at a later stage.

2. The broad essential facts of the prosecution case are that A-1 and A-2 are real brothers and A-3 is their cousin. A-1, Thoti Ekambaram, had developed illicit relationship with Dhanamma, the cousin sister of the deceased, Kuppuswamy Modali. The deceased, his brother Damodaran and other family members had an apprehension that if Dhanamma continued such kind of intimacy with A-1, she would not be in a position to perform the marriage of her daughter. The said apprehension compelled them to send Dhanamma and her daughter to Bangalore where Dhanamma lived with her son. This act of the deceased and his family members stirred up anger in the heart of A-1 and a sense

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

of revenge ruled his thought. The accused waited for the opportunity to pick up quarrels and triggered altercations on every trivial issue with the deceased and his family. The trivial cavil slowly gave rise to a major incident and on one day, A-1 and others allowed their cattle into the sugarcane fields of the deceased who wantonly grazed there and spoiled the crops. As the factual matrix would undrape, on 24.9.2002 at about 3.00 p.m., A-1 and A-2 drove their cows again for grazing the crop of the deceased. On seeing the same, Sekhar, son of the deceased, brought those cattle to his house and tied them. At about 4.00 p.m., A-1 and A-2 went to the house of the deceased, picked up a quarrel, assaulted them and took away their cattle. They also threatened them with dire consequences. Being disturbed, Kuppuswamy Mudali (deceased) and his son Sekhar (PW 1) approached the elders of the village, namely, Gunasekhar and Amudalaputtur Kesava Reddy (PWs-7 and 12) and others, for convening a panchayat so that such unwarranted actions were not repeated. The said elders secured the presence of A-1 and A-2, the deceased and his son and told all of them that there would be a mediation on 26.9.2002 and sincere efforts should be made to put the controversy to rest.

3. The case of the prosecution as further uncurtained is that on 25.9.2002, at about 11.00 a.m., when Sekhar, the deceased and Jayamma, wife of the deceased (PW-3), were in their house, A-1 and A-3 armed with iron rods and A-2 armed with billhook trespassed into the house of the deceased. A-1 and A-2 caught hold of him and his son and dragged them out of the house. A-1, Thoti Ekambaram, assaulted the deceased with iron rods on his head, neck and all over his body and caused injuries as a consequence of which he fell down and lost his consciousness. At that juncture, Arunachalam, PW-6, the younger brother of the deceased, intervened. Thoti Manohar, A-2, struck him with the billhook on his face as a result of which he sustained injuries. A-3 also assaulted him with iron rod on his chest. Rukminamma, PW-2, intervened and was assaulted by A-2. Jayamma, PW-3, was assaulted by A-1. Similarly, when Pargunam, PW-4, and Damodaran, PW-5, intervened, they were also beaten up by the accused persons. All the injured persons were taken to the Government hospital, Chittoor in a jeep for necessary treatment. In the hospital, Kuppuswamy Modali was declared dead. The other remaining injured were admitted in the hospital for treatment.

4. The narration in continuum is that Sekhar, PW-1, lodged an FIR at Police Station, Gangadhara, Nellore and Crime No. 70 of 2002 was registered under Sections 452, 302 and 324 read with Section 34 of the IPC against the accused persons. After the criminal law was set in motion, on 29.9.2002, the Circle Inspector of Police, P.W. 20, arrested A-1 and A-2 who led the said police officer to the sugarcane fields from where the weapons used in the crime were recovered and seized in the presence of panch witnesses. On 3.10.2002, A-3 was arrested. The concerned Investigating Officer recorded the statements of the witnesses and, after completion of other formalities, placed the charge-sheet before the concerned Magistrate who committed the matter to the Court of Session.

5. The accused pleaded not guilty and claimed to be tried.

SUPREME COURT OF INDIA
JUDGMENT

6. Be it noted, initially, the learned Additional District and Sessions Judge (Fast Track Court, Chittoor) was in-charge of the trial of the case but, thereafter, by direction of the High Court in Criminal M.P. No. 6915/2003, the matter was transferred to the Sessions Judge, Chittoor.

7. The prosecution, to establish the charges against the accused persons, examined 20 witnesses, exhibited 23 documents, namely, Exh. P-1 to P-23 and got MOs-1 to 9 marked.

8. The defence chose not to adduce any evidence. However, the contradictions and omissions found in the evidence of some of the prosecution witnesses were marked as Exh. D-1 to D-5.

9. The learned Sessions Judge appreciated the evidence of PW-1, Sekhar, the informant, PW-2, Rukmanamma, wife of Arunachalam, PW-3, Jayamma, mother of PW-1, PW-4 Parganam, PW-5, Damodaran and PW-6, Arunachalam, the injured eye witnesses who had supported the factum of assault on the deceased as well as on them; relied on the testimony of Gunasekhar, PW-7, S. Suri, PW-8, and the then Circle Inspector of Police, PW-20, who conducted the investigation to accept the reliability of seizure of weapons in accordance with Section 27 of the Evidence Act, and further placed reliance on the evidence of PWs-10, 11, 12 and 14 which threw light on the illicit relationship of Dhanamma and her being sent to Bangalore which formed the genesis of bad blood and the course adopted by

the deceased and his relatives to approach the elderly persons to convene a panchayat. The learned Sessions Judge also relied on the testimony of PW-9, Dr. Sai Rani, who conducted the post mortem, PW-16, Dr. M. Krishnaveni, PW-17, Dr. Vijaya Gowri and PW-18, another medical officer, who examined the injured witnesses and gave certificates which were brought on record.

10. We may note here that the other witnesses are basically formal witnesses. It is also apt to state that only Govinda Reddy, PW 15, did not support the case of the prosecution.

11. Considering the evidence and the material brought on record, the learned Sessions Judge came to hold that the prosecution had been able to establish the charge under Section 452 of the IPC against A-1 to A-3, prove the offence under Section 302 of the IPC against A-1 to the hilt and bring home the charge for the offence under Section 302 read with Section 34 of the IPC against A-2 and A-3, and under Section 326 of the IPC against A-2. That apart, the learned trial judge found that the offence under Section 324 of the IPC against A-1 to A-3 was proven and, accordingly, convicted them for the said offences. As far as the sentence is concerned, A-1 was convicted to undergo

SUPREME COURT OF INDIA JUDGMENT

life imprisonment for the offence under Section 302 of the IPC and to pay a fine of Rs.5000/-, in default, to undergo simple imprisonment for six months, rigorous imprisonment for two years under Section 452 of the IPC and to pay a fine of Rs.5,000/-, in default, to suffer simple imprisonment for one month and rigorous imprisonment for one year for the offence under Section 324 of the IPC. Similar sentence was imposed on A-2 for the offences under Sections 452, 302 read with Sections 34, and 324 of the IPC. As far as the offence under Section 326 is concerned, he was sentenced to undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for three months. As far as A-3 is concerned, the sentence remained the same for the offences under Section 302 read with Section 34, and 452 and 324 of the IPC.

12. Being dissatisfied with the judgment of conviction and the order of sentence, all the accused persons preferred appeal before the High Court.

13. Before the appellate court, it was contended that the learned trial Judge has grossly erred by placing reliance on the

evidence of PWs-1 to 8, 10 and 12 despite the incurable discrepancies pertaining to the place and time of occurrence and further the learned trial Judge had totally erred by giving credence to the version of the witnesses who are relatives of the deceased and were absolutely interested to implicate the accused. That apart, it was canvassed that there was no circumstance on record to come to a definite conclusion that A-2 and A-3 shared a common intention with A-1 to do away with the life of the deceased inasmuch as they neither caused injury on the body of the deceased nor did they instigate or exhort A-1 to commit the murder and, therefore, they were only liable for their individual acts and to be convicted and sentenced for the offences committed by them. The said submissions were controverted by the public prosecutor contending that A-2 and A-3 came armed with deadly weapons to the house of the deceased and dragged him from his house and attacked him. That apart, submitted the learned public prosecutor before the appellate court, that they had earlier threatened the deceased with dire consequences and thus, the cumulative effect of the circumstances would go a long way to reveal that there was a common intention to extinguish the life spark of the deceased.

14. The High Court referred to the inquest report of the deceased, the injury reports of the injured persons, the human blood as found from the report of serologist contained in Exh. P-23, analysed the credibility and credentiality of the testimony of the eye witnesses and placed reliance on the seized articles and noted the consistency of the ocular evidence and the corroboration it had received from the medical evidence, the detailed narration of the assault on the witnesses by the assailants' group, the non involvement of A-3 with the previous incident and threat given and the role ascribed to him and came to hold that there was no material to infer the common intention as far as A-3 was concerned and, accordingly, acquitted A-3 for the offence punishable under Section 302 read with Section 34 of the IPC but sustained the conviction and sentence in respect of other offences. As far as the conviction and sentence of A-1 and A-2 are concerned, that was maintained.

15. We have heard the learned counsel for the parties and perused the documents on record.

16. It is submitted by the learned counsel for the appellant that there is material contradiction about A-1 and A-2 letting their

cows graze in the sugarcane field of the deceased inasmuch as different versions have been given by PW-1, the informant, and PW-20, the Circle Inspector of Police who conducted the investigation. It is urged by him that the High Court has fundamentally erred by holding that there was intention on the part of A-1 to cause death of the deceased. The learned counsel would further contend that the deceased was the aggressor and the injuries found on A-1 and A-2 have not been explained as a consequence of which the case of the prosecution does not deserve acceptance. It is his further submission that when the High Court had acquitted A-3 on the foundation that he did not share the common intention, on the same charge the appellant – A-2 should also have been acquitted and, therefore, this Court should acquit him of the offence punishable under Section 302 read with Section 34 of the IPC. It is proponed by him that all the eye witnesses are interested witnesses and they have deliberately implicated the accused persons and further the prosecution has not made any endeavour to produce any independent witness.

17. The learned counsel for the State, in oppugnation, would submit that the accused were the aggressors and the same is

absolutely demonstrable from the evidence brought on record and it does not remotely suggest any other version. After taking us through the evidence of the witnesses, he has contended that the prosecution witnesses are natural and truthful and there is no reason to discard their version. In fact, they have given the true version of the occurrence. It is urged by him that the contention that the injuries on the accused persons have not been explained by the prosecution and hence, its version deserves rejection has no legs to stand upon inasmuch as the injuries are absolutely superficial, minor and in any case, they do not affect the prosecution case in its entirety, especially when the evidence adduced by the prosecution is clear, cogent and credible. The learned counsel would further contend that the case put forth by the prosecution in court is in conformity with the facts disclosed in the First Information Report. It is graphically clear from the testimony of the witnesses, the weapons used in the assault that have been seized, the blood-stained clothes which have been recovered and the evidence of the doctors who had examined the injured witnesses and conducted the post mortem that the prosecution has proved its case beyond reasonable doubt. It is further canvassed by him

that the plea on behalf of appellant that Section 34 of the IPC is not attracted, regard being had to the fact that the said accused had not inflicted any injury on the deceased and hence, had not shared the common intention, is absolutely unacceptable on apposite appreciation of the circumstances and the evidence brought on record which clearly establish the sharing of common intention.

18. Firstly, we shall proceed to deal with the earlier part of the incident. PW-1, K. Sekhar, has testified that on 24.9.2002, A-1 and A-2 had led their cows to graze in the sugarcane field of the deceased. He has stated how he drove the cows to his house and tied them and how A-1 and A-2, the real brothers, came and assaulted the deceased and himself and threatened them with dire consequences before taking the cows back. He has also mentioned that both the accused had pelted stones at them. Regarding the visit to the elders, summon to the accused and decision to resolve the controversy by convening a Panchayat on 26.9.2002, the same has been clearly stated by him. The said version of PW-1 has received corroboration from PWs-2 to 6 and 10. Nothing has really been brought out to create a slightest doubt on that aspect. A contradiction which is sought to be

highlighted is that there is no mention that the cows were led from the barren land of the accused to the sugarcane field of the deceased. The assertions that the cows belonged to A-1 and A-2; that they went to the field of the deceased and destroyed the crops; that they were driven by PW-1 to his house; that A-1 and A-2 reached the house of the deceased, pelted stones, assaulted and forcibly drove back their cows have been clearly established. With this part of the occurrence, it is appropriate to connect the real genesis of the animosity, i.e., Dhanamma with whom A-1 had an illicit relationship and she was sent to Bangalore. P.W.1 as well as PWs-3, 4, 5 and 10, have categorically deposed about this aspects. In the cross-examination at the instance of A-1 and A-2 there was not even a proper suggestion to PW-1 in that regard. As far as PW-4 is concerned, there is further assertion in the cross-examination that there was illicit intimacy between A-1 and Dhanamma which hurt the feelings of the family. Similar is the evidence of other witnesses. To destroy the said aspect of the evidence, it was suggested that as a marriage alliance broke between the daughter of Dhanamma and another, she was sent to Bangalore. The core part of the testimony has really not been

shaken. Thus, the genesis for the cavil and the subsequent disputes have been established beyond any reasonable doubt.

19. Coming to the incident on 25.9.2002, it is in the evidence of PW-1 that at about 11.00 a.m., while the deceased, he and his mother were at their residence, A-1 and A-2 came armed with weapons and trespassed into the house. A-1 and A-2 dragged the deceased and A-1 assaulted the deceased with an iron rod on his head, neck and all parts of the body. He has admitted that A-3 Sivaram was a distant cousin and no role has been ascribed to him in the previous occurrence. It is also in his testimony that A-3 had not gone near the deceased.

20. PW-2, another eye witness to the occurrence, has testified that A-1 had assaulted the deceased with the iron rod on the head, chest and other parts of his body. She has not ascribed any role to accused No. 3.

21. PW-3 is the wife of the deceased. She has categorically deposed that A-1 had assaulted her husband. She has graphically stated the active role played by A-2.

22. PW-4, who is another injured witness, has deposed about the assault by A-1 and the beatings by A-2 to other injured

SUPREME COURT OF INDIA
JUDGMENT

persons who intervened. Similar is the evidence of other injured eye witnesses. Additionally, the earlier testimony has received corroboration from the medical evidence in material particular.

23. Now, we shall proceed to dwell with the criticism on the base of which the case of the prosecution is sought to be demolished. The learned counsel for the appellant would submit that the injuries sustained by the accused have not been explained. On a perusal of the evidence of PW-20, the Investigating Officer, it appears that when he arrested A-1 and A-2, there were certain injuries on their person and they stated that they had received the injuries at the hands of the deceased. It is worth noting that the injuries are superficial in nature, the accused were not sent for medical examination and further there is no suggestion whatsoever as regards the injuries sustained by them to any of the witnesses. The story built up as regards the fight between the two groups does not remotely appeal to common sense and, more so, in the absence of any evidence, it is like building a castle in Spain. Quite apart from the above, non-explaining of injuries of the accused persons is always not fatal to the case of the prosecution. In this context, we may usefully

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

refer to ***Sri Ram v. State of M.P.***[1] wherein it has been held that mere non-explanation of the injuries by the prosecution may not affect the prosecution case in all cases and the said principle applies to cases where the injuries sustained by the accused are minor and superficial or where the evidence is so clear and cogent, so independent and disinterested and so probable, consistent and creditworthy that it far outweighs the effect of the omission on the part of the prosecution to explain the injuries. Hence, we repel the said submission of the learned counsel for the appellants.

24. The second submission of the learned counsel for the appellant is that all the witnesses, being relatives, are interested witnesses. The occurrence in part took place inside the house and the rest of it slightly outside the premises of the deceased. Under these circumstances, the family members and the close relatives are bound to be the natural witnesses. They intervened and sustained injuries. Their sustaining of injuries has got support from the ocular evidence as well as the medical evidence. The same has been dislodged and if we allow ourselves to say so, not even a fragile attempt has been made to dislodge the same.

[1] (2004) 9 SCC 292

By no stretch of imagination, it can be said that they are chance witnesses. In the obtaining factual matrix, they are the most natural witnesses. In this context, we may refer with profit the decision of this Court in ***Dalip Singh* v. *State of Punjab***[2], wherein Vivian Bose, J., speaking for the Court, observed as follows: -

> "We are unable to agree with the learned Judges of the High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rule. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan (1952) SCR 377 at p. 390 = (AIR 1952 SC 54 at page 59)."

SUPREME COURT OF INDIA
JUDGMENT

In the said case, it was further observed that a witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close

[2] AIR 1953 SC 364

relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true that when feelings run high and there is personal cause for enmity, there is a tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

25. In ***Masalti* v. *State of U.P.***[3], it has been ruled that normally close relatives of the deceased would not be considered to be interested witnesses who would also mention the names of the other persons as responsible for causing injuries to the deceased.

26. In ***Hari Obula Reddi and others* v. *The State of Andhra Pradesh***[4], a three-Judge Bench has held that evidence of interested witnesses is not necessarily unreliable evidence. Even partisanship by itself is not a valid ground for discrediting or rejecting sworn testimony. It cannot be laid down as an invariable rule that interested evidence can never form the basis of conviction unless corroborated to a material extent in material

[3] AIR 1965 SC 202
[4] AIR 1981 SC 82

particulars by independent evidence. All that is necessary is that the evidence of interested witnesses should be subjected to careful scrutiny and accepted with caution. If on such scrutiny, the interested testimony is found to be intrinsically reliable or inherently probable, it may, by itself, be sufficient, in the circumstances of the particular case, to base a conviction thereon.

27. In ***Kartik Malhar* v. *State of Bihar***[5], it has been opined that a close relative who is a natural witness cannot be regarded as an interested witness, for the term 'interested' postulates that the witness must have some interest in having the accused, somehow or the other, convicted for some animus or for some other reason.

28. In ***Pulicherla Nagaraju alias Nagaraja Reddy* v. *State of Andhra Pradesh***[6], while dealing with the liability of interested witnesses who are relatives, a two-Judge Bench observed that it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or close relative to the deceased, if it is otherwise found to be

[5] (1996) 1 SCC 614
[6] AIR 2006 SC 3010

trustworthy and credible. The said evidence only requires scrutiny with more care and caution, so that neither the guilty escapes nor the innocent is wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, then it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.

29. Tested on the anvil and touchstone of the aforesaid principles, we find that the evidence of the injured witnesses who are close relatives to the deceased have really not embellished or exaggerated the case of the prosecution. They are the most natural witnesses and there is nothing on record to doubt their presence at the place of occurrence. By no stretch of imagination, it can be stated that the presence of the said witnesses at the scene of the crime and at the time of occurrence was improbable. Their version is consistent and nothing has been suggested to bring any kind of inherent improbabilities in their testimonies.

SUPREME COURT OF INDIA
JUDGMENT

30. The learned counsel for the appellant has endeavoured hard to highlight certain discrepancies pertaining to time, situation of the land, number of persons, etc., but in our considered opinion, they are absolutely minor in nature. The minor discrepancies on trivial matters not touching the core of the matter cannot bring discredit to the story of the prosecution. Giving undue importance to them would amount to adopting a hyper-technical approach. The Court, while appreciating the evidence, should not attach much significance to minor discrepancies, for the discrepancies which do not shake the basic version of the prosecution case are to be ignored. This has been so held in **State of U.P. v. M.K. Anthony**[7]; **Appabhai and another v. State of Gujarat**[8]; **Rammi alias Rameshwar v. State of Madhya Pradesh**[9]; **State of H.P. v. Lekh Raj and another**[10]; **Laxman Singh v. Poonam Singh**[11] and **Dashrath Singh v. State of U.P.**[12] No evidence can ever be perfect for man is not perfect and man lives in an imperfect world. Thus, the duty of the court is to see with the vision of prudence and acceptability of the deposition regard being had to the substratum of the prosecution story. In

[7] AIR 1985 SC 48
[8] AIR 1988 SC 696
[9] AIR 1999 SC 3544
[10] (2000) 1 SCC 247
[11] (2004) 10 SCC 94
[12] (2004) 7 SCC 408

this context, we may reproduce a passage from the decision of this Court in ***State of Punjab* v. *Jagir Singh Baljit Singh and Karam Singh***[13], wherein H.R. Khanna, J., speaking for the Court, observed thus:-

> "A criminal trial is not like a fairy tale wherein one is free to give flight to one's imagination and phantasy. It concerns itself with the question as to whether the accused arraigned at the trial is guilty of the crime with which he is charged. Crime is an event in real life and is the product of interplay of different human emotions. In arriving at the conclusion about the guilt of the accused charged with the commission of a crime, the court has to judge the evidence by the yardstick of probabilities, its intrinsic worth and the animus of witnesses. Every case in the final analysis would have to depend upon its own facts. Although the benefit of every reasonable doubt should be given to the accused, the courts should not at the same time reject evidence which is ex facie trustworthy on grounds which are fanciful or in the nature of conjectures."

31. In view of our aforesaid analysis, we are unable to accept the submission of the learned counsel for the appellant that the evidence of the eye witnesses should be rejected solely on the ground that they are close relatives and interested witnesses.

[13] AIR 1973 SC 2407

32. The next plank of submission which has been ambitiously and zealously pyramided by the learned counsel for the appellant is that the appellant has been erroneously convicted with the aid of Section 34 of the IPC. It is worth noting that the High Court has acquitted A-3 on the ground that he did not share the common intention. Certain distinct features have been emphasised by the High Court. They are (i) he is a distant cousin of A-1 and A-2 and belongs to a different village; (ii) he had no role to play with the genesis of the occurrence and the subsequent cavil; (iii) he had neither participated in the dragging of the deceased nor did he assault on his body; (iv) he was at a distance (v) A-1 and A-2 are real brothers and they have definite roles as regards the previous incident; and (vi) A-2 was intervened by the witnesses from assaulting the deceased. The material evidence on record clearly shows that A-1 and A-2 had threatened the deceased with dire consequences. Though they had gone to the elders on 24.9.2002 and the Panchayat was to be convened on 26.9.2002, yet on 25.9.2002 at 11.00 a.m., armed with lethal weapons, they went to the house of the deceased.

33. In **Ram Tahal and others v. The State of U.P.[14],** while dealing with the applicability of Section 34 of the IPC, a two-Judge Bench observed there is no doubt that a common intention should be anterior in time to the commission of the crime showing a pre-arranged plan and prior concert, and though it is difficult in most cases to prove the intention of an individual, yet it has to be inferred from the act or conduct or other relevant circumstances of the case. This inference can be gathered by the manner in which the accused arrived on the scene and mounted the attack, the determination and concert with which the beating was given or the injuries caused by one or some of them, the acts done by others to assist those causing the injuries, the concerted conduct subsequent to the commission of the offence, for instance, that all of them had left the scene of the incident together, and other acts which all or some may have done as would help in determining the common intention. In other words, 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.

[14] AIR 1972 SC 254

SUPREME COURT OF INDIA
JUDGMENT

34. In **Rajesh Govind Jagesha v. State of Maharashtra**[15]**,** a two-Judge Bench has held that the existence of common intention can be inferred from the attending circumstances of the case and the conduct of the parties. No direct evidence of common intention is necessary. For the purpose of common intention, even the participation in the commission of the offence need not be proved in all cases.

35. In **Bishna alias Bhiswadeb Mahato and others v. State of West Bengal**[16], it has been held that for the purpose of attracting Section 34 of the IPC, specific overt act on the part of the accused is not necessary. He may even wait and watch. Inaction on the part of an accused may sometime go a long way to achieve a common intention or an object with others.

36. In **Manik Das and others v. State of Assam**[17]**,** it has been held as follows:-

> "The Section does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of a

[15] AIR 2000 SC 160

[16] AIR 2006 SC 302

[17] AIR 2007 SC 2274

> common intention animating the accused leading to the doing 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 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 prove exactly what part was taken by each of them. As was observed in Ch. Pulla Reddy and Ors. v. State of Andhra Pradesh (AIR 1993 SC 1899). 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 overt act on the part of the accused."

SUPREME COURT OF INDIA
यतो धर्मस्ततो जयः
JUDGMENT

37. Coming to the case at hand, the appellant had an inimical relationship with the deceased and his family as the previous occurrences would show. Despite a consensus being arrived at that there would be a panchayat on 26.9.2002, they, armed with deadly weapons, went to the house of the deceased and dragged the deceased. The previous meeting of minds with pre-arranged plan or prior concert as has been held in number of authorities is difficult to establish by way of direct evidence. They are to be inferred from the conduct and circumstances. As

is evincible, the weapons they carried were lethal in nature. The deceased was absolutely helpless and not armed with any weapon. It was most unexpected on their part as normally it was expected that there would be a panchayat on the next day. The two brothers, A-1 and A-2, dragged the deceased outside the house and A-1 gave the blows. True it is that A-2 did not give the blow, but his participation from the beginning till the end would clearly reveal that he shared the common intention with his brother. He had assaulted the other witnesses who had tried to intervene. Thus, though he might not have inflicted the injury, yet it can safely be concluded that he shared the common intention making him jointly liable.

38. In view of our preceding analysis, we do not find any merit in this appeal and, accordingly, the same stands dismissed.

JUDGMENT

....J.
[DR. B.S. Chauhan]

....J.
[Dipak Misra]

New Delhi;
May 15, 2012.

SUPREME COURT OF INDIA
JUDGMENT