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UNIVERSITY

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SCIENCES**

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LECTURE-13

The ingredients of section 34 :

(i) Several persons must have a common intention and pre-arranged plan to commit an offence; (ii) in furtherance of which the criminal act is done; (iii) each of such persons must actually participate in the commission of the offence in some way or other at the time the crime is actually being committed.” (iv) The participation must be in doing the act, not merely in its planning. But this participation need not in all cases be by physical presence. In offences involving violence, normal presence at the scene of offence on the principle of joint liability may be necessary, but such is not the case in respect of other offences where the offence consists of diverse acts which may be done at different times and places.

In the case of **Noor Mohammad Mohd. Yusuf Momin (appellant) V. The State of Maharashtra**[2] the trial Court convicted Mohd. Taki Haji Hussain Momin under Section 302 and acquitted three other accused including the appellant. On appeal against acquittal, the Bombay High Court reversed the acquittal and convicted the appellant and two others under Section 120B and 302 read with Section 34 India Penal Code. The appellant was also convicted under Section 302/109 IPC and sentenced to imprisonment for life on two counts separately. The appellant’s conviction under Section 302/34 IPC was set aside on the following observations:

“From the evidence it seems highly probable that at the time of the actual murder of Mohd. Yahiya the appellant was either present with other three co-accused or was somewhere nearby. But this evidence does not seem to be enough to prove beyond reasonable doubt his presence at the spot in the company of the other accused when the murder was actually committedwe are, therefore, inclined to give to the appellant the benefit of doubt in regard to the charge under Section 302 read with Section 34 Indian Penal Code.”

The application of Section 34 in respect of the offences other than physical violence have been explained in **Tukaram Ganpat’s** [3] case wherein the facts against the accused including the appellant Tukaram were that they stole some bundles of copper wire from the godown of a company after breaking open the godown and removed them away by a lorry which stopped at a weigh-bridge where the brokers for sale were present. There was no evidence about the presence of the appellant at the scene of offence. The concurrent findings of the courts below were that the appellant was in possession of duplicate keys of the burgled godown found missing from the factory and that he was present at the weigh bridge. The appellant had no explanation for possessing of godown keys nor for his presence at weigh-bridge. In the context of the matter the Supreme Court maintained the conviction of the appellant on applying the principles of common intention as under:

“Mere distance from the scene of crime cannot exclude culpability under Section 34 which lays down the rule of joint responsibility for a criminal act performed by a plurality of persons. In **Barendra Kumar Ghosh v. The King Emperor**[4] the Judicial Committee drew into the criminal net those ‘who only

stand and wait.' This does not mean that some form of presence, near or remote, is not necessary, or that mere presence without more, at the spot of crime, spells culpability. Criminal sharing, overt or covert by active presence or by distant direction, making out a certain measure of jointness in the commission of the act is the essence of Section 34. Even assuming that presence at the scene is a pre-requisite to attract Section 34 and that such propinquity is absent. Section 107 which is different in one sense, still comes into play to rope in the accused. The act here is not the picking the godown lock but house-breaking and criminal house trespass. This crime is participated in by those operating by remote control as by those doing physical removal. Together operating in concert, the criminal project is executed. Those who supply the duplicate key, wait at the weigh bridge for the break-in and bringing of the booty and later secrete the keys are participles criminal. And this is the role of accused No.2 according to the Courts below. Could this legal inference be called altogether untenable?

MCQs-

i. The right guaranteed under Article 32 can be suspended:

- A. by the Parliament
- B. by the State Legislature
- C. by the Supreme Court of India
- D. when proclamation of emergency is in operation.

ii. Petitions to the Supreme Court under Article 32 are subject to the rule of Res judicata except:

- A. Quo Warranto
- B. Habeas Corpus
- C. Certiorari
- D. Prohibition.

iii. The right given by Article 32:

- A. cannot be abrogated by the Act of Legislature
- B. cannot be abrogated unless the Constitution itself is amended
- C. can be altered by the State Legislature
- D. none of the above.

iv. The Supreme Court has power under Article 32 to issue directions or orders or writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari:

- A. only when there is a question of enforcement of a fundamental right
- B. when there is a question of internal disputes among communal groups
- C. when there is a question of election disputes

D. when there is a question of riotous situation.

v. Under which one of the following cases the traditional rule of filing petition only by the person aggrieved except in the case of habeas corpus is relaxed:

A. Trilokchand Moichand v. H.B. Munshi

B. Joginder Nath v. UOI

C. Rabindranath Bose v. UOI

D. Upendra Baxi v. State of UP.