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SCIENCES**

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LECTURE-15

The application of Section 34 is well illustrated in the decision of the case *Barendra Kumar Ghosh v. Emperor* by Privy Council.^[10] In this case the appellant was charged under section 302 of the Indian Penal Code with the murder of Post-Master. On August 3rd 1923, the Sub-Post-Master at Sankaritolla Post Office was counting money at his table to the back room, when several men appeared at the door, demanded of him to give up the money. Almost immediately afterwards they fired pistols at him. He was hit in two places and died almost at once. Without taking any money the assistants fled, separating as they ran. One man was pursued by other post office assistants and was caught with a pistol in his hand. He was the accused Barendra Kumar Ghose. In the subsequent trial for murder his contention was that he was standing outside and he had not fired at the deceased. He was compelled to join others for alleged robbery and had no intention to kill the Post-Master. The trial judge directed the jury that if they were satisfied that the Post-Master was killed in furtherance of common intention of all three men, then the prisoner was guilty of murder whether he fired the fatal shot or not. It was held by the Calcutta High Court and the Privy Council that upon the true construction of Section 34 of the Code the direction was correct and Barendra Kumar Ghosh was held guilty with the murder of the Post-Master.

In *Sheoram Singh and Another v. The State of U.P.*^[11] the Supreme Court held that common intention may develop all of a sudden during the course of the occurrence, but still unless there is cogent evidence and clear proof of such common intention, an accused cannot be vicariously held guilty under s. 34. In this case where a father and son had trespassed into the house of H with the object of killing d, and H met with death at the shot of the father when H refused to send out D from his house, the court held that the son cannot be held guilty of the offence of murder of H, as there was no cogent evidence to show that the son had any intention to kill H. The common object of father and son was to kill, who happened to be in the house of H. The son too had fired at D their common enemy which causes his death, for which he had been rightly held guilty under s. 307 of the I.P.C. But he was acquitted of the charge under s. 302 read along with s. 34, for the death of H which was due to the firing by the father. The latter was found guilty under s. 302, I.P.C.

In the case of *Abdur Rahim vs. State*,^[12] it was held that a common intention may develop on the spot between the participants. To apply section 34, the persons must be physically present at the actual commission of the crime. Thus again, even in regard to an offence involving physical violence it is not necessary that every accused must take an active part in the attack on the victim.

The ingredients of an unlawful assembly are:(a) an assembly of five or more persons.(b) they must have a common object(c) the common object must be one of the five specified in the section 141 of the Penal Code.

We have noticed that when more persons than one is involved in an offence, all of them may be tried together in the circumstances as stated in section 239 of the Cr.P.C. But the principle of joint liability in a criminal act has been described in section 34, 109 and 149 of the Penal Code. If more than one person

commits an offence, any of the above sections may be applicable. The above sections do not create any distinct offence.

When more than one person commits an offence in furtherance of common intention then all of them shall be charged by adding section 34 with the principal section of the offence. When an offence is committed by one and others abet it then section 109 is to be added along with the substantive offence against those who abetted the offence. When it is not clear as to who actually committed the offence because there was no eye witness, then all may be charged with the offence by adding section 109.

The allegation was that 'A' and 'B' called the victim from his house and before calling the victim both of them and 'C' were talking with the victim in a field near his house. After about one hour, dead body of the victim was found near a bus stand. In this case it was not known which of the three accused murdered the victim. In such a circumstance, charge is to be framed against all the three u/s 302/109 of the Penal Code[13].

When an offence is committed by a member of an unlawful assembly, all the persons forming unlawful assembly shall be charged by adding section 149 if the allegation is that the offence was committed in prosecution of the common object of that assembly. An unlawful assembly is an assembly of five or more than five persons if the common object of the assembly is one of the objects as enumerated in section 141 of the Penal Code.

To add section 149, it is to be seen whether the accused persons constituted an unlawful assembly and whether the offence was committed by any one of that assembly in prosecution any common object or objects as enumerated in section 141. But in case of adding section 34 of the penal Code, it is to be seen whether the accused persons committed the offence in furtherance of a common intention. The expression 'common intention' is not defined in the Penal Code. However, from judicial pronouncements we find that two conditions are required: (i) the presence of the accused persons at the place of occurrence coupled with actual participation in any form; and (ii) a pre-concert or previous meeting of mind. However, from the later decisions of the Appellate Division, it is now an accepted principle that previous meeting of mind or pre-concert is not essential and a common intention may develop on the spot[14].

To add section 109 of the Penal Code it is to be seen whether there was any abetment. What is abetment is explained in section 107 of the Penal Code. According to this section, abetment is constituted (a) by instigating a person to commit an offence; or (b) by engaging in a conspiracy to commit the offence; or (c) by intentionally aiding a person to commit the offence or intentionally aids by any act or illegally aids by any act or illegal omission the doing of that thing. So, to add this section it is not necessary that there shall be actual participation in an offence; a conspiracy will make a person liable to be charged for abetment u/s 109.

MCQs-

i. The jurisdiction to try a person for an offense depends upon, under the general principle of criminal law is...

- A) Place of commission of crime, within local area of such jurisdiction.
- B) A place where such person is found
- C) Nationality of the person
- D) None of the above

ii. Who prepared the draft of the Indian Penal Code?

- A) Lord Channing
- B) Lord Chelmsford
- C) Lord Macaulay
- D) None of the above

iii. The Indian penal code is divided into...

- A) XIXIII Chapters and 512 Sections
- B) XXIXII Chapters and 511 Sections
- C) XIIXVI Chapters and 501 Sections
- D) XXIII Chapters and 511 Sections

iv. the Indian Penal Code 1860 came into effect/existence from...

- A) 6 October 1960
- B) 5 October 1980
- C) 1 May 1980
- D) 6 December 1960

v. The Indian Penal Code 1860 is extended to...

- A) All union territories of India
- B) All the states of India
- C) Whole of India except the state of Jammu and Kashmir
- D) None of the above