



FACULTY OF JURIDICAL SCIENCES

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LECTURE-14

There must be general intention shared by all the persons concerned. A furtherance of a common design is a condition precedent of convicting each of the persons who take part in the commission of a crime, and the mere fact that several persons took part in a crime in the absence of a common intention is not sufficient to convict them of that crime. This principle was well illustrated by Privy Council in the case of **Mahabub Shah v. Emperor**[5]. Subsequently in the case of **Mahmood V. The King Emperor**[6], it was clarified that the existence of such pre-concert could be established even by proof of acts performed by individuals after the completion of the main crime. Chief Justice Cornelius (as he then was) while delivering judgment of the case of **Hamida Bano vs. Ashiq Hossain**[7] observed that everything said by this court in a judgment and more particularly, in a judgment in a criminal case must be understood with great particularity as having been said with reference to facts of that particular case.

Common intention is a question of fact and is subjective. But it can be inferred from facts and circumstances.

When the evidence establishes that the accused committed the offence in furtherance of a common intention with others, then section 34 may apply to that case even though no formal charge under section 34 has been framed against the accused. The omission to frame the charge is a mere irregularity which is curable if the defence is not prejudiced.

When the charge is under section 302/149, the Penal Code, the conviction under section. 302/34 is permissible. If the facts to be proved and the evidence to be adduced with reference to the charge under section 149 would be the same if the charge were framed with the aid of section 34, then failure to frame the charge under section 34 would not result in any prejudice to the accused and the conviction with the aid of section 34 is permissible.

The differences in the ingredients under section 34 and section.149 may be tabulated as follows:

Section 34	Section 149
(i) The common intention may be of ‘several persons’, i.e., more than one person.	(i) There must be an unlawful assembly of five or more persons.
(ii) There must be a prior concert and meeting of minds	

of the several persons.

(iii) What is essential is the formation of the ‘common intention.’”

(iv) Section 34 is applicable only where the act done is the same act which was intended by way of common intention.

(ii) There need not be any prior concert and meeting of minds; it is enough that the number of persons is 5 or more and their common object is the commission of an offence.”

(iii) The pre-condition is the formation of an unlawful assembly, having for its common object the commission of any of the offences mentioned in s. 149. Once this is formed each member of the unlawful assembly will be liable for any offence committed in furtherance of the common object even though he might not have done it with his own hands.

(iv) Section 149 is wider and is applicable not only where the act done was the same as was intended but also where it is a different act, provided it is immediately connected with the common object of the assembly or an act which the members of the assembly knew to be likely to be committed in prosecution of that object.

Section 34 embodies the principle of joint liability in the doing of a criminal act and the essence of that liability is the existence of the common intention and the participation in the commission of the offence in furtherance of common intention invites the application of the section. Section 109 may, on the other hand, be attracted even if the abettor is not present when the offence abetted is committed provided he has instigated the commission of the offence or has engaged with one or more persons in the conspiracy to commit an offence and in pursuance of that conspiracy some act or omission takes place or has

intentionally aided commission of an act or illegal omission. Both ss. 34 and 149 deals with a combination of persons who become liable to be punished as sharers in the commission of offences. The non-applicability of s. 149 is, therefore, no bar in convicting the accused under s. 34, if the evidence discloses the commission of an offence in furtherance of the common intention of them all. Under s. 120B, P.C., the criminal conspiracy postulates an agreement between two or more persons to do or cause to be done an illegal means. It differs from ss. 34 and 109, P.C., in that here a mere agreement is made an offence even if no step is taken to carry out the agreement.

MCQs-

i. The law on private defence in India:

- A. is the same as in England
- B. is narrower than the one in England
- C. is wider than the one in England
- D. none of the above.

ii. The right to private defence is available with respect to:

- A. harm to body
- B. harm to movable property
- C. harm to immovable property
- D. all the above.

iii. Under section 98 right to private defence also is available against a:

- A. person of unsound mind
- B. person who does not have maturity of understanding
- C. both (a) & (b)
- D. neither (a) nor (b)

iv. Every person has a right of private defence of his own body and the body of any other person against any offence affecting the human body, has been provided:

- A. under section 96 of IPC
- B. under section 97 of IPC
- C. under section 98 of IPC
- D. under section 99 of IPC.

v. Under Article 32 a writ petition can be made to the Supreme Court by a person who himself has suffered only. Under which of the following, a relative or friend of a person aggrieved can file a writ petition:

- A. Habeas Corpus
- B. Mandamus
- C. Certiorari
- D. all of the above.