2026:CGHC:11869

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Reserved on : 17-02-2026
Delivered on : 12 .03.2026

CRA No. 645 OF 2005

1. Ram Krishna Vaishya @ Chotu aged about 35 years, s/o Sitaram Vaishya r/o. Om Nagar, Jarhabhata, Bilaspur (CG).
2. Jhallu aged about 32 years s/o. Kanhaiyalal Dhimar, r/o. Amlai, Dist. Shahdol (MP) died and deleted on 23-2-2016.
3. Munnan Verma, aged about 30 years, s/o. Albela Verma, r/o. Behind VIP, Guest House, Dhanpuri, District Shahdol (MP).(died and deleted).
4. Lallu aged about 30 uyears, s/o. Jageshwar Panika, r/o. Dhanpuri, District Shahdol (MP).

... Appellants

Versus

- State of Chhattisgarh through Police Station City Kotwali, Bilaspur (CG). **... Respondent/State**

For Appellants	:	Mr. Manoj Paranjpe, Sr. Advocate with Mr. Rishabh Gupta, Advocates.
For Respondent/State	:	Mr. Sanjeev Pandey, Dy. Advocate General.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Judgment

1. This appeal has been preferred by the appellants under Section 374 (2) of the Code of Criminal Procedure, 1973 against judgment dated 3.8.2005 passed by learned VIIIth Additional District Sessions Judge,

(FTC) Bilaspur (C.G.) in Sessions Trial No. 35/2002, whereby the appellants stand convicted and sentenced as under:-

Conviction		Sentence
U/s 450 of IPC	:	R.I. for 5 years and fine of Rs. 5000/-,in default of payment of fine, to undergo additional R.I. for 6 months.
U/s 307 of IPC	:	R.I. for 10 years and fine of Rs.25,000/- each, in default of payment of fine, to undergo additional R.I. for 1 year.
U/s. 307/34 of IPC		R.I. for 10 years and fine of Rs.25,000/- each and in default of payment of fine, additional R.I. for 1 year. (All the sentences are directed to run concurrently).

2. The case of prosecution is that complainant Sunita Tiwari (P.W./13) who was residing at Lala Kashyap Colony where she was running beauty parlour. On 29.10.2001 at about 8.45 in the night when she was taking tea along with Suchcha Nand Wadhwani (P.W./18) in her house, at that time appellant Ram Krishna Vaishya @ Chhotu who is known to the victim resident of Jarhabhata entered into the house of complainant along with other persons. One of the accused Ram Krishna Vaishya told Suchcha Nand Wadhwani to return the papers pertaining to the house which has resulted into dispute and they started threatening to kill Suchcha Nand Wadhwani by fire. At that time when Sunita Tiwari (PW/13) intervened, then the accused Ram Krishna fired at her by firearm (gun) as a result of which she received a bullet injury above thigh in the stomach causing bleeding also. He has again fired by gun which crossed between Sunita Tiwari (PW-13) and Suchcha Nand Wadhwani (PW/18) and stuck to the wall. Thereafter, Suchcha Nand Wadhwani (PW/18) has taken care of the victim and took her to District Hospital Bilaspur. On the basis of the complaint, Crime No. 346/1 was

registered by the City Police Station on 29.10.2001 for commission of offence under Section 307/34 of IPC read with Sections 25 and 27 of the Arms Act.

3. After completion of the investigation, charge sheet was filed before the Court of Chief Judicial Magistrate Bilaspur, who in turn committed the case to the Court of Additional Sessions Judge, Bilaspur which was registered as Sessions Case No. 364 of 2003. The learned trial Judge after conclusion of trial convicted and sentenced the appellants as submitted above, but the learned trial Court has acquitted the accused Ram Krishna @ Chhotu for commission of offence under Section 25 and 27 of the Arms Act as before no proper permission from competent authority i.e District Magistrate has been obtained by the prosecution to initiate prosecution against him for commission of said offence.

4. In order to bring home the guilt of the appellants, the prosecution examined 18 witnesses namely Jhumuklal Bhoi (PW-1), Ramcharan Rajak (PW-2), Doctor Smt. S. Thakur (PW-3), Vikram Khetrapal (PW-4), Dr. S. Chatterjee, Medical Oficer (PW-5), P.S. Toppo, Tahsildar (PW-6), Dhruw Prasad, Head Constable (PW-7), Sehattar Prasad Kurre, Constable (PW-8), B. Prasad (PW-9), Rajendra Bojwani (PW-10), Pradeep Wadhwani (PW-11), Ramnarayan Joshi (PW-12), Sunita Tiwari, complainant (PW-13) Dr. L. Singh, Medical Officer (PW/14), Daroga Singh, constable (PW/15), Shiv Prasad Singh, Investigating Officer, (PW/16), Ramesh Wadhwani (PW/17) and Suchcha Nand Wadhwani, eye witness (PW/18) and exhibited the documents from seizure memo (Ex.P-1), agreement (Iqrarnama (Article A/1), Seizure memo (Ex.P/2), Doctor’s report (Ex.P/3 & P./4), complainant’s x-ray

report (Ex.P/5 & P/6), complainant dying declaration (Ex.P/7), Rojnamcha Sanha (Ex.P/8), FIR (Ex.P/9), property seizure memo (complainant house) Ex.P/10), property seizure memo (Ex.P/11), original register of hotel (Ex.P/12), Dehati nalishi (Ex.P/13), seizure memo (complainant cloth) Ex.P/14), medical report of Sachhinand Wadhwani (Ex.P/15), Government Inspection report (Ex.P/16), work certificate form (Ex,P/17), spot map (Ex.P/18), receipt of goods sent for examination (Ex.P/19), test report (Ex.P/20) and arrest memo (Ex. P/21).

5. Statements of the accused/appellants were recorded under Section 313 CrPC in which they denied the allegations made against them and pleaded their innocence and false implication in the case. The appellant examined 2 witnesses namely Rasik Bakhsh, (DW/1) and Shailedra Masih (DW/2) in their defense and exhibited documents from Ex.D/1 to Ex.D/8.

6. After hearing the parties, learned District Sessions Judge on the basis of material on record and upon considering the statements of the witnesses has passed the judgment of conviction and order of sentence against the appellants as mentioned above. Being aggrieved with the judgment of conviction and order of sentence, the appellants have preferred the instant Criminal Appeal.

7. Learned counsel for the appellants would submit that the finding recorded by the trial Court is contrary to the evidence, material on record as the statement of the victim has not been taken into consideration in its true prospect. He would further submit that the prosecution has failed to prove the necessary ingredients of the offence under Section 307 of the IPC. Learned trial Court ought to

have considered that no case under Section 307/34 of IPC is made out against the appellants. Learned trial Court has not considered the whole evidence adduced by the prosecution as well as that of the defence. Learned trial Court has also failed to appreciate that looking to the evidence on record there was no intention to assault Sunita Tiwari. He would further submit that the learned trial Court ought to have considered that there is nothing on record regarding memorandum or seizure of the weapon which could have been important evidence to connect the appellants with the crime in question. He would further submit that from the dying declaration of the injured (Ex.P/7), it would be crystal clear that there was no intention of appellant No.1 to assault the injured and there appears to be no evidence to connect the appellants No. 2, 3 and 4 with the crime in question.

8. He would further submit that conviction of the appellants in the present case is completely based on circumstantial evidence and as per well settled position of law that in a case based on circumstantial evidence, the prosecution must convince the Court that circumstances pointed towards the guilt of the accused alone and non-else as also lack of his innocence, then only on circumstantial evidence, the accused can be convicted. He would further submit that the prosecution is unable to prove the case against the appellants beyond reasonable doubt, as such they are entitled to claim acquittal by granting benefit of doubt. He would submit that order of conviction passed by the learned trial Court suffers from perversity and illegality warranting interference by this Court. Lastly, he would further submit that there are mitigating factors available on record as the incident

took place on 29-10-2001 and more than 24 years have already been lapsed and the appellants have already remained in jail from 13.04.2002 to 26.04.2002 and thereafter, from date of conviction on 03.08.2005 till this Court has granted bail on 21.11.2005, thus they remained in jail for 03 months and 26 days and even after releasing on bail, they have never misused the liberty granted to them and they have no past criminal antecedents. It has been further contended that if the accused are directed to undergo the remaining jail sentence, the family life of the appellants will be adversely affected, as such he would pray that the sentence may be reduced considering the mitigating factors available on record. To substantiate his submission, he would refer to the judgment rendered by Hon'ble the Supreme Court in case of **Tilku alias Tilak Singh Vs. State of Uttarakhand [2025 SCC OnLine SC 353]**.

9. To substantiate that the conviction of the appellants in the present case is completely based on circumstantial evidence and no circumstances point out the involvement of the appellants in connection with the crime in question he has referred to the judgment of the Hon'ble Supreme Court in the matter of **Sharad Birdhichand Sarda vs. State of Maharashtra**, reported in **(1984) 4 SCC 166,** judgment of the Hon'ble Division Bench of this Court in the matter of **Kamlesh @ Tikam Manhare vs. State of Chhattisgarh in CRA No 177 of 2019** decided on 2-1-2025, judgment of Hon'ble Supreme Court in case of **Sanjay vs. State of Uttar Pradesh,** reported in **2025 SCC Online SC 572**, **State of Madhya Pradesh vs. Kashiram and others**, reported in **2009 (4) SCC 26** judgment of this Court in the matter of Ismail Mohammad vs. State of Chhattisgarh in Criminal Appeal No. 602/2003

and also judgment of High Court of Madhya Pradesh in case of Sukhpal @ Chukhande Singh vs. State of Madhya Pradesh in Criminal appeal No. 176/2017.

10. Per contra, learned counsel for the State supporting the impugned judgment passed by the learned trial Court would submit that the prosecution has proved its case beyond reasonable doubt, thus the appellants have rightly been convicted and sentenced for the aforesaid offence. He would further submit that the findings and the approach of the trial court in this regard being based on proper appreciation of the evidence are in conformity with law, the same does not require any interference by this Court and would pray for dismissal of this appeal.

11. I have heard learned counsel for the parties and perused the documents placed on record with utmost circumspection.

12. From the submissions made by the parties, the point emerged for determination is whether the trial Court was justified to convict the appellants for commission of offence under Sections 307, 450 of IPC and imposition of jail sentence of 10 years and 5 years respectively with fine is legal and justified?.

13. To appreciate this point, this Court has to meticulously examine the evidence led by the prosecution and also to examine the findings of the trial Court.

14. The victim (PW/13) in her examination-in-chief has betrayed the contention made in the FIR and has stated that accused started assaulting Suchcha Nand Wadhwani in her house and when she came for rescue Suchcha Nand Wadhwani and told him do not commit assault in my house, then Ram Krishna fired by his country made pistol

which was getting shot above her thigh in the stomach and thereafter he has again fired by his country made pistol which crossed between Suchcha Nand Wadhwani and herself and the bullet hit the wall. She has further stated that due to injury she fell down. Thereafter, Ram Krishna along with his accomplice fled away from her house. She has stated that she remained in the hospital for 1 month and 10 days. She has also stated that she has put her signature on the dying declaration (Ex P/7). The witness was extensively cross-examined by the defense, wherein she has affirmed that she got injury and there was blood stain in her clothes also. She has denied that she has stated to the Police that Suchcha Nand Wadhwani assaulted her by country made pistol. She has stated that in the report and dying declaration she has made correct information and also stated that in the FIR she has stated that due to quarrel between Suchcha Nand Wadhwani and Ram Krishna Vaishya she came to rescue then Ram Krishna fired on her by country made pistol which has caused injury on her stomach, thereafter, she fell down and also stated that thereafter another bullet has been shot which is left between her and Suchcha Nand Wadhwani.

15. Shiv Prasad Singh (PW/16) who has done the investigation has stated that on submission made by victim one gown containing blood stain in which there was one whole due to bullet was seized. He has also admitted that in Ex. P/10 at the place of occurrence how many pellets of bullets were seized has not been mentioned.

16. Suchcha Nand Wadhwani (PW/18) who was present at the place of occurrence stated that by name and by face he knew Ram Krishna Vaishya, Lallu Prasad Diwan, Munna and Jhallu. He has also

supported the case of the prosecution and stated that when the victim told him that she will not involve between them, then Chhotu became angry and all the accused started assaulting him, thereafter, Chhotu had fired at Sunita Tiwari by gun and she got gun injury above her thigh in the stomach. The said witness was extensively cross-examined by the defense, but in the cross-examination he remained affirmed. On the contrary, in the cross-examination he has stated that when he has pressed the injured part of the victim by cloth then he got blood in his hands and thereafter, he has rapped the victim by bed-sheet. The witness has categorically denied that due to scuffle he fell down and also denied that **during scuffle he has pointed his country made pistol at Chhotu and denied that he has fired at Chhotu and between rescuing them the victim came and sustained injuries.**

17. The prosecution examined Dr. Smt. S. Thakur (PW-3) who examined the victim and has stated that egg shaped gunshot was found on her right *iliac fossa* and sides were burnt admeasuring 2 ½ X 2 inch and width of injury was upto peritoneal plant. The side muscles torned and blood was leaked. There was lot of wound from her right iliac fossa to right lumber region in which reddishness was there. She has further stated that the condition of victim was serious and pulse rate was slow, her blood pressure was 70/60, therefore, she has referred the matter to surgical expert.

18. Vikram Khetrapal, Surgical Specialist (PW/4) who has examined the victim and has reiterated the injuries and accordingly, an emergency operation was conducted. He has stated that after the operation he has removed bullets and 24 pellets. He has also stated that victim was

admitted on 29.10.2001 and she was discharged on 03.12.2001. The Doctor in his report has assessed the injuries as well as pellets recovered from the body of the victim and operation done by him which reads as under:

> "1. मरीज शाक की हालत में था, शरीर में पीलापन था। नाडी की गति 90 प्रति मिनट, ब्लड प्रेशर 64 मि.मि. मर्क्यूली था। स्वांस की गति 22 प्रति मिनट थी। मरीज रसक्लेस था, जांघ के उपरी एक तिहाई हिस्से पर एवं दाहिने आईलक फोसा में घाव था। उससे रक्त श्राव हो रहा था। एवं खून जमा हुआ था। चोट का आकार 3 X ढाई इंच X पेट की गहराई तक था। चोट की विस्तृत प्रकृति जानने के लिए, आपरेशन की आवश्यकता थी। मरीज का तुरन्त खून जांच, एवं खून की व्यवस्था की सलाह दी गई और मरीज को इमरजेन्सी आपरेशन के लिए तैयार करने के लिए बताया गया।
>
> 2. आपरेशन करने पर मैनें निम्न पायाः–
>
> 1. दाहिनी जांघ पर इनग्वायनल इलामेंट के नीचे, जांघ के सामने हिस्से पर ढाई X दो इंच X मांस पेशियों की गहराई तक का एक गन शाट बोर्न जिसमें रक्त वाहिनी भी चोट ग्रस्त थी। घाव की किनारे काला पडा था और झुलसा हुआ था। किनारा लेसेरेटेड था। और घाव से खून निकल रहा था। यहां से पेलेटस निकाले गए।
>
> 2. दाहिने कोहिनी पर तीन इंच लम्बाई का खरोच था।
>
> 3. पेट के सामने हिस्से पर दाहिने आईलक एवं लम्बर क्षेत्र में खरोच जो लाल रंग की थी पाई गई।
>
> 4. दाहिनी ओर से निचले पेरामिलीयनन इनसीजन से पेट खोलने पर पेट के अन्दर किसी प्रकार का खून जमा हुआ नहीं पाया गया। एवं अंतडिया भी स्वस्थ थी।
>
> 5. सभी नसों को (रक्त वाहिनियों) बांधा गया, मांस पेशियों को परतवार रिपेयर किया गया।"

19. P.S. Toppo, Tahsildar (PW-6) who has recorded dying declaration (Ex. P/7) has stated in his evidence that the victim was competent enough to depose her evidence and he has asked her when the incident took place, then she has replied the same and recorded in the Ex. P/7 wherein she has put her signature by her left hand as in her right hand I.B. set was installed. The witness was cross-examined wherein he has affirmed that the victim was in a position to depose the statement without any difficulty and no witness was present at the time of recording of statement.

20. Dr. L. Singh, Medical Officer (PW/14) who has examined Suchcha Nand Wadhwani on 30.10.2001 has submitted his report wherein it

was found that there was liner abrasion below the lips, there was a braze of 2/1 cm and all the injuries were before 12 hours of examination. In the cross-examination he has admitted that these injuries may be caused because of fell down also but the injury No. 2 may not be caused by nails, but it may be caused by any material.

21. The accused in their statements under Section 311 of CrPC has denied the allegations and have taken plea of false implication. They examined defense witness Rakshit Baksh wherein he has stated that Suchcha Nand Wadhwani told him that to create pressure upon Chhotu then he removed his country made pistol when Sunita Tiwari intervened bullet was shot to her. The witness was cross-examined by the prosecution, wherein he has stated that the Suchcha Nand Wadhwani and Suntia Tiwari came to the house of Dr. Aviram Sharma at 9 O' clock in white Maruti Car in which Ramesh was also there, the victim was sitting in the back seat and wearing red gown and there was bleeding from her body. He has stated that whatever Suchcha Nand Wadhwani has informed him, he has not informed to Dr. Abhiram Sharma. He has denied that when the victim was taken to Dr. Abhiram Sharma's clinic, she was rapped by bed-sheet and voluntarily stated that she wore maxi or gown.

22. From the evidence brought on record, particularly the statement of the victim wherein she has clearly stated that Ram Krishna fired at her which remains unshaken in the extensive cross-examination by the appellants. The eye witness has also supported the version of victim and incident of fired by country made pistol is affirmed by the Smt. S. Thakur (PW-3) as well as Dr. Viktram Khetrapal (PW-4) who has done

the operation of the victim. The Smt. S. Thakur has clearly stated that the condition of the victim was serious and blood pressure was also lower.

23. Thereafter, Shiv Prasad Singh, Investigating Officer (PW-16) who has investigated the matter has arrested the accused Ram Krishna on 30.10.2001 and Punchnama was prepared as Ex. P/21. In the Punchnama (Ex. P/21). The prosecution has also sent the seized articles i.e. purse, baniyan, maxi of the victim article A, B, C, D and in the baniyan and maxi of the victim there is blood stain for chemical examination to FSL. The prosecution has also sent the various articles for forensic test. In the report it was found that 44 distorted pellets admeasuring 15. 60 gms., 24 partial distorted pellets in which blood stain was there. The weight of this Article was 6.56 gms. In article W/1 it was found distorted overshot band was found admeasuring radius of 0.707 cm. In the chemical analysis it was found that it contains led and nitrate. Similarly, in other articles also there was led and nitrate was found and it was opined that the Articles Ex. P/1 and Ex. P/2 were used part of bullet of smooth bore weapon. The Article Ex.P/1 may be part of load of 12 bore used bullets. The Article Ex. P/2 may be piece of used bullets, fragments of cartridge bed.

24. From the appreciation of this evidence and material on record, it is proved beyond doubt that the victim suffered injury due to shot by bullet and from the evidence it is also proved beyond doubt by the prosecution that appellant No. 1 Ram Krishna has shot bullet upon the victim. This finding is supported by statement of victim, Suchcha Nand Wadhwani who was present at the place of occurrence and supported

the version of victim as detailed above derived from consideration of entire evidence and material placed by the prosecution. Thus, there is clear intention of the appellant to commit offence is proved by the prosecution beyond reasonable doubt. Use of bullet has been proved by the prosecution through the evidence of the victim, Dr. S. Thakur (PW-3) and the Dr. Vikram Khetrapal (Ex. P4) as well as Exhibit P/16 the report of forensic science. As such the ingredients to attract offence under Section 307 are proved by the prosecution beyond reasonable doubt.

25. Even from the evidence of the victim's witness PW/13, it is quite vivid that the sworn testimony by the injured witness generally carries significant weight. Such testimony cannot be dismissed as unreliable unless there was pellucid and substantial discrepancy or contradiction that undermine their credibility. If there is any exaggeration in the deposition that is immaterial to the case, such exaggeration should be disregarded. However, it does not warrant the rejection of entire evidence. Therefore, the suspicion raised by the appellants regarding the genesis of the case is rendered unfounded.

26. The Hon'ble Supreme Court has examined the evidentiary value of injured witness in case of **Balu Sudam Khalde and Another vs State of Maharashtra {2023 (13) SCC 365}** wherein the Hon'ble Supreme Court has held as under :-

> 26. When the evidence of an injured eye-witness is to be appreciated, the under- noted legal principles enunciated by the Courts are required to be kept in mind:-
>
> (a) The presence of an injured eye-witness at the time and place of the occurrence cannot be doubted unless there are material contradictions in his deposition.
>
> (b) Unless, it is otherwise established by the evidence, it must

be believed that an injured witness would not allow the real culprits to escape and falsely implicate the accused.

(c) The evidence of injured witness has greater evidentiary value and unless compelling reasons exist, their statements are not to be discarded lightly.

(d) The evidence of injured witness cannot be doubted on account of some embellishment in natural conduct or minor contradictions.(e) If there be any exaggeration or immaterial embellishments in the evidence of an injured witness, then such contradiction, exaggeration or embellishment should be discarded from the evidence of injured, but not the whole evidence.

(f) The broad substratum of the prosecution version must be taken into consideration and discrepancies which normally creep due to loss of memory with passage of time should be discarded.

27. The statement of injured person has also been supported by eye witness Suchha Nand Wadhwani (PW/18) whose credibility has not been diluted despite extensive evidence by the defense and eye witness holds high evidentiary value and cannot be rejected without major contradiction and can be accepted as its face value. The Hon'ble Supreme Court in case of **Rai Sandeep @ Deepu alias Deepu Vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21** has held as under:

"22. In our considered opinion, the "sterling witness should be of very high quality and caliber whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence

> committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

28. On the basis of above principle when this Court tests the version of Suchcha Nand Wadhwani PW/18 the eye witness, it is fortunate that the said witness has passed the test mentioned above and there is no variation in her version from statement made before the Court. There is no material variation regarding identification of accused as well as the manner in which the occurrence took place. Thus, he has fully supported the case of the prosecution.

29. So far as further submission of the appellants that Section 34 of IPC is not attracted to punish other accused has also been considered by the trial Court while recording its finding that when Ram Krishna Vaishya has fired, he has not stated that all the three accused were not present and also from the defense taken by the other accused it is not established that they have made any attempt to avoid commission of offence to escape from the clutches of Section 34 of IPC. The collective action of all the accused persons entering in the house indicates sharing of common intention. Section 34 of IPC makes a co-perpetrator who had participated in the commission of offence. The

Hon'ble Supreme Court in case of reported in **2022 (7) SCC 521** in paragraphs 26 to 29 has held as under:

> "26. Section 34 IPC makes a co-perpetrator, who had participated in the offence, equally liable on the principle of joint liability. For Section 34 to apply there should be common intention between the co-perpetrators, which means that there should be community of purpose and common design or pre-arranged plan. However, this does not mean that co-perpetrators should have engaged in any discussion, agreement or valuation. For Section 34 to apply, it is not necessary that the plan should be pre-arranged or hatched for a considerable time before the criminal act is performed. Common intention can be formed just a minute before the actual act happens. Common intention is necessarily a psychological fact as it requires prior meeting of minds. In such cases, direct evidence normally will not be available and in most cases, whether or not there exists a common intention has to be determined by drawing inference from the facts proved. This requires an inquiry into the antecedents, conduct of the co- participants or perpetrators at the time and after the occurrence. The manner in which the accused arrived, mounted the attack, nature and type of injuries inflicted, the weapon used, conduct or acts of the co-assailants/perpetrators, object and purpose behind the occurrence or the attack etc. are all relevant facts from which inference has to be drawn to arrive at a conclusion whether or not the ingredients of Section 34 IPC are satisfied. We must remember that Section 34 IPC comes into operation against the co-perpetrators because they have not committed the principal or main act, which is undertaken/performed or is attributed to the main culprit or perpetrator. Where an accused is the main or final perpetrator, resort to Section 34 IPC is not necessary as the said perpetrator is himself individually liable for having caused the injury/offence. A person is liable for his own acts. Section 34 or the principle of common intention is invoked to implicate and fasten joint liability on other co-participants.
>
> 27. Further, the expression/term "criminal act" in Section 34 IPC refers to the physical act, which has been done by the co-perpetrators/participants as distinct from the effect, result or consequence. In other words, expression "criminal act" referred to in Section 34 IPC is different from "offence". For example, if A and B strike Lathi at X, the criminal act is of striking lathis, whereas the offence committed may be of murder, culpable homicide or simple or grievous injuries.
>
> 28.The expression "common intention" should also not be confused with "intention" or "mens rea" as an essential ingredient of several offences under the IPC. Intention may be an ingredient of an offence and this is a personal matter. For some offences, mental intention is not a requirement but knowledge is sufficient and constitutes necessary mens rea. Section 34 IPC can be invoked for the said offence also [refer Afrahim Sheikh and Ors.

(supra)]. Common intention is common design or common intent, which is akin to motive or object. It is the reason or purpose behind doing of all acts by the individual participant forming the criminal act. In some cases, intention, which is ingredient of the offence, may be identical with the common intention of the co-perpetrators, but this is not mandatory.

29. Section 34 IPC also uses the expression "act in furtherance of common intention". Therefore, in each case when Section 34 is invoked, it is necessary to examine whether the criminal offence charged was done in furtherance of the common intention of the participator. If the criminal offence is distinctly remote and unconnected with the common intention, Section 34 would not be applicable. However, if the criminal offence done or performed was attributable or was primarily connected or was a known or reasonably possible outcome of the preconcert/contemporaneous engagement or a manifestation of the mutual consent for carrying out common purpose, it will fall within the scope and ambit of the act done in furtherance of common intention. Thus, the word "furtherance" propounds a wide scope but should not be expanded beyond the intent and purpose of the statute. Russell on Crime, (10th edition page 557), while examining the word "furtherance" had stated that it refers to "the action of helping forward" and "it indicates some kind of aid or assistance producing an effect in the future" and that "any act may be regarded as done in furtherance of the ultimate felony if it is a step intentionally taken for the purpose of effecting that felony." An act which is extraneous to the common intention or is done in opposition to it and is not required to be done at all for carrying out the common intention, cannot be said to be in furtherance of common intention [refer judgment of R.P. Sethi J. in Suresh (supra)].

30. From the evidence of the victim (PW/1) as well as Suchcha Nand Wadhwani (PW-18), it is manifest that the accused persons, acting in furtherance of their common intention, assaulted the victim. Presence of all the accused at the scene substantially facilitated the successful commission of the offence. The act was carried out pursuant to a pre-arranged plan, and the commission of the offence would not have been possible without the aid and participation of the other accused. It is well settled that for fastening liability with the aid of Section 34 of the IPC, each accused must participate in the commission of the offence in some manner, which stands duly established in the present case.

Consequently, the submission advanced by the learned senior counsel for the appellants that all the accused cannot be convicted with the aid of Section 34 IPC is misconceived and is liable to be rejected. It is well settled position of law that element of participation in the commission of offence, is the chief feature that distinguishes Section 34 IPC from Section 149 IPC and other Sections. The Hon'ble Supreme Court in case of **Vasant @ Girish Akbarasab Sanavale and Another vs. The State of Karnataka {2025 INSC 221}** has examined the provisions of Section 34 of the IPC as under:-

> "86. It is true that to convict any particular accused constructively under Section 34 of an offence, say of murder, it is not necessary to find that he actually struck the fatal blow, or any blow, but there must be clear evidence of some action or conduct on his part to show that he shared in the common intention of committing murder", (pp. 457-458).
> 87. The net result of the above discussion is that although Section 34 deals with a criminal act which is joint and an intention which is common, it cannot be said that it completely ignores or eliminates the element of personal contribution of the individual offender in both these respects.
> 88. On the other hand, it is a condition precedent of Section 34, IPC, that the individual offender must have participated in the offence in both these respects. He must have done something, however slight, or conduct himself in some manner, however nebulous whether by doing an act or by omitting to do an act so as to indicate that he was a participant in the offence and a guilty associate in it. He must also be individually a party to an intention which he must share in common with others.
> 89. In other words, he must be a sharer both in the 'criminal act' as well as in the 'common intention' which are the twin aspects of Section 34, IPC. In view of the above position, it is difficult for the accused to legitimately urge before the Court that owing to the mention of Section 34, IPC, in the charge, he was misled or prejudiced in his defence by being persuaded to presume that all consideration of his individual liability was completely shut out as a result thereof. He would be presumed to know the law on the point and if, in spite of it, he deluded himself into any such belief, he would be doing so at his own peril. [See: Om Prakash(supra)]
> 90. As held by this Court in Suresh Sakharam Nangare v. The State of Maharashtra, 2012 (9) Judgements Today 116, if common intention is proved but no overt act is attributed to the individual accused, Section 34 of the code will be attracted as essentially it involves vicarious liability but if participation of the accused in the crime is proved and common intention is absent

> Section 34 cannot be invoked. In other words, it requires a pre-arranged plan and pre supposes prior concert therefore there must be meeting of mind."

31. From plain reading of the above paragraph for applying Section 34 of IPC there should be a common intention of all the accused persons which means community of purpose and common design. The common intention does not mean that the co-accused persons should have engaged in any discussion or agreement so as to prepare a plan or hatch a conspiracy for committing the offence. Common intention is a psychological fact and it can be formed a minute before the actual happening of the incident or as stated earlier even during occurrence of the incident. Thus, the learned trial Court has rightly convicted all the accused with the aid of Section 34 of IPC.

32. So far as submission of learned counsel for the appellants that there was no intention to fire bullet upon victim as such, offence under Section 307 of IPC cannot be made out is being considered by this Court now. From the evidence brought on record, it is quite vivid that the accused has used the pistol for firing upon victim twice as one bullet shot above her thigh in the stomach and thereafter he has again fired from his country made pistol which crossed between Suchcha Nand Wadhwani and herself and the bullet hit the wall. Even the learned trial Court while appreciating that whether the accused has intention or not has recorded its finding that once the accused has fired Suchcha Nand Wadhwani and the victim then any prudent man will understand that due to use of bullet body injury will cause death. The trial Court has also recorded its finding that in the present case the accused has not only used bullet twice which clearly proved his

intention to kill the victim or other persons, thus, all the ingredients of Section 307 of IPC is made out. Section 307 of IPC is always matter of scrutiny and the Hon'ble Supreme Court in case of **Sivamani & Another vs. State represented by Inspector of Police,** reported in **2023 SCC Online SC 1581** has held in paragraph 9 as under:

> "9. In State of Madhya Pradesh v Saleem, (2005) 5SCC 554, the Court held that to sustain a conviction under Section 307, IPC, it was not necessary that a bodily injury capable of resulting in death should have been inflicted. As such, non-conviction under Section 307, IPC on the premise only that simple injury was inflicted does not follow as a matter of course. In the same judgment, it was pointed out that '...The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section.' The position that because a fatal injury was not sustained alone does not dislodge Section 307, IPC conviction has been reiterated in Jage Ram v State of Haryana, (2015) 11 SCC 366 and State of Madhya Pradesh v Kanha, (2019)3 SCC 605. Yet, in Jage Ram (supra) and Kanha(supra), it was observed that while grievous or life-threatening injury was not necessary to maintain a conviction under Section 307, IPC, 'The intention of the accused can be ascertained from the actual injury, if any, as well as from surrounding circumstances. Among other things, the nature of the weapon used and the severity of the blows inflicted can be considered to infer intent."

33. Again, Hon'ble Supreme Court in the case of **Shoyeb Raja vs. State of Madhya Pradesh**, reported in **2024 INSC 731** has examined what will be the essential ingredients to attract offence under Section 307 of IPC and has held as under:

> "11.1 In State of Maharashtra v. Kashirao3, the Court identified the essential ingredients for the applicability of the section. The relevant extract is as below:
>
> "The essential ingredients required to be proved in the case of an offence under Section 307 are:
>
> (i) that the death of a human being was attempted;
>
> (ii) that such death was attempted to be caused by, or in consequence of the act of the accused; and
>
> (iii) that such act was done with the intention of causing death; or that it was done with the intention of causing such bodily

injury as : (a) the accused knew to be likely to cause death; or (b) was sufficient in the ordinary course of nature to cause death, or that the accused attempted to cause death by doing an act known to him to be so imminently dangerous that it must in all probability cause (a) death, or (b) such bodily injury as is likely to cause death, the accused having no excuse for incurring the risk of causing such death or injury." (2003) 10 SCC 434

11.2 This Court in Om Prakash v. State of Punjab4, as far back as 1961, observed the constituents of the Section, having referred to various judgments of the Privy Council, as under:

"a person commits an offence under Section 307 when he has an intention to commit murder and, in pursuance of that intention, does an act towards its commission irrespective of the fact whether that act is the penultimate act or not. It is to be clearly understood, however, that the intention to commit the offence of murder means that the person concerned has the intention to do certain act with the necessary intention or knowledge mentioned in Section 300. The intention to commit an offence is different from the intention or knowledge requisite for constituting the act as that offence. The expression "whoever attempts to commit an offence" in Section 511, can only mean "whoever : intends to do a certain act with the intent or knowledge necessary for the commission of that offence". The same is meant by the expression "whoever does an act with such intention or knowledge and under such circumstances that if he, by that act, caused death, he would be guilty of murder" in Section 307. This simply means that the act must be done with the intent or knowledge requisite for the commission of the offence of murder. The expression "by that act" does not mean that the immediate effect of the act committed must be death. Such a result must be the result of that act whether immediately or after a lapse of time." (Emphasis supplied)

11.3 Hari Mohan Mandal v. State of Jharkhand5 holds that the nature or extent of injury suffered, are irrelevant factors for the conviction under this section, so long as the injury is inflicted with animus. It has been held:

"10. …To justify a conviction under this section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at 1961 SCC OnLine SC 72 (2004) 12 SCC 220 all to actual wounds. … What the court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

> 11. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. If the injury inflicted has been with the avowed object or intention to cause death, the ritual nature, extent or character of the injury or whether such injury is sufficient to actually causing death are really factors which are wholly irrelevant for adjudging the culpability under Section 307 IPC. The section makes a distinction between the act of the accused and its result, if any. The court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the section. Therefore, it is not correct to acquit an accused of the charge under Section 307 IPC merely because the injuries inflicted on the victim were in the nature of a simple hurt." (Emphasis supplied)"

34. Thus, it is quite vivid that the finding recorded by the learned trial Court convicting the appellants under Section 307 of IPC cannot be held to suffer from perversity or illegality warranting interference by this Court.

35. The further submission of the learned senior counsel for the appellants that conviction of the appellants under Section 450 of IPC is not made out is being considered by this Court. Section 450 of IPC provides that whoever commits house trespass in order to commit of any offence punishable with (imprisonment for life) shall be punished with imprisonment of either description for a term not exceeding 10 years and shall also be liable to fine. From the evidence and material on record, it is quite vivid that the appellants have committed trespass and thereafter by deadly weapon they have committed an offence under Section 307 of IPC which has been found proved by the evidence adduced by the prosecution, particularly the evidence of PW-13 and PW-18. Thus, the trial Court while convicting the accused for the offence under Section 450 of IPC has rightly recorded its finding in convicting the accused persons. This finding neither suffers from perversity nor illegality warranting interference by this Court.

36. Further submission of the appellant that since the incident has taken place in the year 2001 and more than 25 years have already been lapsed, the appellants have settled in their life and if they are ordered to suffer remaining jail sentence it will not only ruin their life as well as their family members who are dependent upon them. Thus, he would pray for reducing the sentence already undergone by them. The record of the case shows that the accused Ram Krishna Vaishya remained in jail from 30.10.2001 to 29.12.2001 and the other accused Lallu was absconded and surrendered on 13.04.2002 and remained in jail from 13.04.2002 to 26.04.2002. Thereafter, they have been released on bail by this Court on 21.11.2005, thus, they remained in jail for 03 months and 26 days. It is reported that appellant No. 2 Jhallu S/o Kanhaiya Lal Dhimar passed away on 23.03.2006 as per the death certificate annexed with the record and appellant No. 3 Munna Verma S/o Albela Verma passed away on 20.10.2013, as such, this appeal so far it relates to appellants No. 2 and 3 stands abated.

37. Now, the submission for already undergone is being considered by this Court. Looking to the gravity of the offence and the manner in which the victim was injured, there are no mitigating factors available on record, but looking to the facts that the incident pertains to 2001 and more than 25 years have been lapsed and there is no minimum sentence provided under the Indian Penal Code for commission of offence under Section 307 of IPC as well as Section 450 of IPC. This Court cannot lose sight of law laid down by the Hon’ble Supreme Court in the case of **Paramweshwari vs. The State of Tamilnadu and others, reported in 2026 INSC 164** wherein the Hon’ble Supreme

Court has examined the mitigating factors for reducing the sentence and held in paragraphs 22, 24 and 34 has held as under:

> "22. The objective of punishment is to create an effective deterrence so that the same crime/actions are prevented and mitigated in future. The consideration to be kept in mind while awarding punishment is to ensure that the punishment should not be too harsh, but at the same time, it should also not be too lenient so as to undermine its deterrent effect.
>
> 24. This objective was also reiterated by this Court in a catena of judgments (see: Ahmed Hussein Vali Mohammed Saiyed and Another vs. State of Gujarat reported in (2009) 7 SCC 254); Guru Basvaraj Alias Benne Settappa vs. State of Karnataka reported in (2012) 8 SCC 734 and various others) wherein it was held that the object of awarding appropriate sentences is that society should be protected and the crimes should be deterred. The balancing has to be done between the rights of the accused and the needs of the society at large.
>
> 34. The misplaced understanding of various courts in treating compensation as a substitute of sentence is both a matter of concern and a practice which should be condemned. We have observed a trend amongst various High Courts wherein the sentences awarded to the accused persons by the Trial Court are reduced capriciously and mechanically, without any visible application of judicial mind. Considering the gravity of the situation as thus, we have culled out certain basic factors, which are to be kept in mind by the courts while dealing with imposition of sentence, in line with the view taken by this Court in the aforementioned cases. The said factors are enunciated as below:
>
> A. Proportionality: Adherence to the principle of "just deserts" ought to be the primary duty of the courts. There should be proportionality between the crime committed and the punishment awarded, keeping in consideration the gravity of the offence.
>
> B. Consideration to Facts and Circumstances:
>
> Due consideration must be given to the facts and circumstances of the case, including the allegations, evidence and the findings of the trial court.
>
> C. Impact on Society: While imposing sentences, the courts shall bear in mind that crimes essentially impair the social fabric of the society (of which the victim(s) is/are an indispensable part) and erodes public trust. The sentence should be adequate to maintain the public trust in law and administration, however, caution should also be taken, and the Court shall not be swayed by the outrage or emotions of the public and must decide the question independently.
>
> D. Aggravating and Mitigating Factors: The courts, while deciding the sentence or modifying the sentence, must weigh the circumstances in which the crime was committed, and while doing so, the court must strike a fair balance between the aggravating and the mitigating factors.".

38. In light of the law laid down by Hon'ble the Supreme Court and the facts of the case, and further considering the fact that the prosecution has also not placed any material on record indicating the criminal antecedents of appellants as ordered by this Court and they are regularly attending the trial Court after releasing by this Court on bail and have not misused the liberty granted to him while granting bail by this Court, I am of the view that ends of justice would be served if the jail sentence of 10 years for commission of offence under Section 307 and 307/34 of IPC awarded by the trial Court is reduced to seven years and also reducing the sentence under Section 450 of IPC for 3 years and enhancing the fine amount from Rs. 25,000/- to Rs. 50,000/- for commission of offence under Section 307 of IPC and for commission of offence under Section 450 of IPC from Rs. 5,000/- to Rs. 10,000/- and for commission of offence under Section 307/34 of IPC the fine amount will be enhanced from Rs. 25,000/- to Rs. 50,000/- which shall be payable to the victim by the appellant No. 1 and 4 as victim compensation. The appellants are directed to deposit the enhancing amount of Rs.55,000/- before the trial Court within a period of two months from the date of passing of this judgment and thereafter the learned trial Court shall pay the aforesaid enhanced amount to the victim within two weeks from the date of depositing the aforesaid amount by the appellants.

39. Accordingly, conviction under Sections 450, 307 and 307/34 of IPC are affirmed, but jail sentence of 10 years awarded by the trial Court under Section 307 and 307/34 of IPC is reduced to seven years and for commission of offence under Section 450 of IPC is reduced to three years enhancing the fine amount as detailed above, in default in

payment of fine amount one year R.I. will also be suffered by them for all the offence. All the sentence as awarded by this Court shall run concurrently.

40. Consequently, the instant appeal is partly allowed to the extent indicated herein-above with regard to appellant No. 1 and 4 and so far appellant No. 2 and 3 are concerned, it is abated on account of their death.

41. From the records, it appears that the appellant No. 1 and 4 are on bail and their bail bonds shall stand cancelled. The appellants themselves shall surrender before the concerned trial Court for serving out the remaining part of the jail sentence within 8 weeks from the date of judgment. If the appellants fails to surrender before the concerned trial Court, the Police authority will take necessary steps and information will be submitted to the Registry of this Court.

42. Let a copy of this judgment and the original record be transmitted to the trial court concerned forthwith for necessary information and compliance.

Sd/-
(Narendra Kumar Vyas)
Judge

Raju