



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Deconstructing Joint Liability & Complicity using Case Laws

Spandan Tikle^a

^aOP Jindal Global University, Sonipat, India

Received 05 January 2023; *Accepted* 21 January 2023; *Published* 27 January 2023

Joint Liability & Complicity are concepts related to immoral or unlawful activities committed by multiple persons. Sections 34¹ and 149² of the Indian Penal Code 1864 deal with aspects of the 'common intention' and 'common object' of a group which is paramount to assess in cases like these. It is important to distinguish between them, although they may overlap. The rationale behind making such provisions is to aid in assessing the liability of the accused persons belonging to a group in a 'joint manner' such that they can be dealt with in a fair manner making it less burdensome for Courts as well. The main objective of this paper is to ascertain the liability of numerous individuals taking part to pursue the same offence, specifically once they have devoted different acts at the same time as committing the identical offence using relevant case laws.

Keywords: *joint liability, complicity, unlawful assembly, intention, object.*

INTRODUCTION

It is not unknown to any law student that the Indian Penal Code, 1860³ is filled with applications of various degrees of 'mens rea' and the related 'actus reus' constituting a crime. In the case of

¹ Indian Penal Code 1860, s 34

² Indian Penal Code 1860, s 149

³ Indian Penal Code 1860

crimes committed by multiple persons, two important provisions come to play i.e., Sections 34⁴ and 149⁵ which discuss 'common intention' and 'common object' as explained below -

*"34. Acts did by several persons in furtherance of common intention. – a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."*⁶

The elements of this provision are that there must be an "intentional" criminal act that is performed by multiple persons implying more than two. Each person herein is guilty of the crime as though it were performed by him/her alone. This section pertains to constructive liability which means that it is not in itself an offence but an ancillary section to be read with other sections. But what would happen when the 'intent factor' is absent and there is only knowledge as the 'mens rea'?

Section 35⁷ deals with such cases - *"When such an act is criminal because of its being done with a criminal knowledge or intention."*⁸

Before reading into section 149⁹, an important section to be discussed in section 141¹⁰ which explains an 'unlawful assembly -

"Unlawful assembly. – An assembly of five or more persons is designated an "unlawful assembly" if the common object of the persons composing that assembly is –

First. – To overawe by criminal force, or show of criminal force, 12[the Central or any State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of a such public seroant; or

Second. – To resist the execution of any law, or any legal process; or

⁴ *Ibid*

⁵ *Ibid*

⁶ *Ibid*

⁷ Indian Penal Code 1860, s 35

⁸ *Ibid*

⁹ *Ibid*

¹⁰ Indian Penal Code 1860, s 141

Third. – To commit any mischief or criminal trespass, or other offence; or

Fourth. – Using criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or another incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth. – Using criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do.

Explanation. – An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.”

The abovementioned section requires a group of five or more persons to be committing a crime from the given categories with mere ‘knowledge’. Any member may commit the offence and participation is not necessary. Section 142 describes a situation wherein a person intentionally joins such an assembly and continues to be a part of it knowing the illegality aspect of it consequently becomes part of the unlawful assembly.

“149. Every member of unlawful assembly guilty of the offence committed in prosecution of the common object. – If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.”

This provision, therefore, requires the commission of a crime by an ‘unlawful assembly’ i.e., at least five persons to pursue a ‘common object’, leading to all members being guilty of the act.

BROAD DIFFERENCE BETWEEN THE IMPORTANT SECTIONS

Parameter	Section 34	Section 149
Scope	Narrow	Broad

No. of persons required	2 or more	5 or more
Key aspect	Common Intention	Common Object
Participation & Premeditation	Required	Not required

RELEVANT CASE LAWS WITH ANALYSIS

1. *Barendra Kumar Ghosh v Emperor*¹¹: On the night of 3rd August 3, 1923, a postmaster was shot in the premises of the Sankaritolla Post Office because he did not hand over the money to the men who were involved in his killing. His hand and armpit were injured by the gunshot, leading to an immediate collapse. The men then fled the scene without taking any money except for one who was captured i.e., the appellant. This man happened to be armed but argued not shooting. Justice Sumner made his famous comment from this case which helps explain joint liability - "*they also serve those who only stand and wait.*"¹² This essentially means that even if the appellant was present at the crime scene but had not actively taken part in the actual performing of the crime, he would still be liable as he aided the escape of others.

"In other words, "a criminal act" means that unity of criminal behaviour, which results in something, for which an individual would be punishable if it were all done by himself alone, that is, in a criminal offence."¹³ Section 34 was assessed in this case which deals with multiple acts done by several persons to intend to further their common intention making each liable for the final act as though it were done by him/her. 'Passive involvement' is included in assessing the liability under such circumstances, however, this judgement failed to decipher the common intention clearly which became a critique of it.

¹¹ *Barendra Kumar Ghosh v Emperor* AIR (1925) PC 1

¹² *Ibid*

¹³ *Ibid*

2. Mahboob Shah v Emperor¹⁴: In this case, a man, Mahbub Shah was tried for the murder of another, Allah Dad which was committed by the absconder Wali Shah. Mahbub Shah and Wali Shah only intended to scare away the people who were trying to collect the reeds from a river. They were armed but there was no intention of killing anyone. Wali Shah in the process ended up killing Allah's Dad and escaped, so what would be the liability of Mahbub Shah in such a case? Section 34 was applied to invoke which 'common intention' must be shown. By the circumstances of the case, it was gathered there was no prior plan made to prove the act performed to be done with the common intention. The men had gathered near the river only to threaten and stop the others from collecting the reeds from the river, i.e., that was the only intention. Therefore, Mahbub Shah was acquitted.

*"Care must be taken not to confuse same or similar intention with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if overlooked will result in a miscarriage of justice. No intention to kill as there was no premeditation. At max, the intention was just to threaten and therefore Mahbub Shah is not liable."*¹⁵

Krishna Iyer, J expounded the law on physical presence thus in another judgement of '**Takaram Ganapat Pandare v State of Maharashtra**'¹⁶: *"Criminal sharing, overt or covert by the 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."*¹⁷

3. Mathew v State of Travancore-Cochin¹⁸: In this case, thirty-one persons were tried for rioting and killing two police constables at a police station past midnight, where twenty-nine persons had gathered to release the two other members of the *unlawful assembly* who were imprisoned at that time. The members were carrying with them "deadly weapons such as choppers, knives, bamboo and other sticks and a dagger."¹⁹ Mathew and Velayudhan were the two police constables who were killed during the night. Justice Vivian Bose delivered the judgement for

¹⁴ *Mahboob Shah v Emperor* AIR (1945) PC 118

¹⁵ *Ibid*

¹⁶ *Takaram Ganapat Pandare v State of Maharashtra* AIR (1974) SC 514

¹⁷ *Ibid*

¹⁸ *Mathew v State of Travancore-Cochin* AIR (1956) SC 241

¹⁹ *Ibid*

this case. Section 149 was applied here, and the common object was to be proved. It was contended that the appellants “*could very reasonably have said that they had no idea that it was murder and that they did not even know that any of the members of the assembly carried lethal weapons*”²⁰. The formation of an unlawful assembly was proved with enough information and simply the objective or the *mens rea* of the men was left to be evaluated.

*“The charge set out that the common object was to rescue the 30th and 31st accused by force and to murder the policemen on duty as well as to loot the records, arms, and ammunition of the police station. Now section 149 applies not only to offences committed in pursuance of the common object but also to offences that members of the assembly know are likely to be committed. It would be impossible on the facts of this case to hold that the members of the assembly did not know that murder was likely to be committed in pursuance of a common object of that kind by an assembly as large as the one we have here. Accordingly, even if the common object is not placed as high as murder the conviction on the murder-cum-rioting charge was fully justified.”*²¹

It was held that all the appellants were of sound mind and could reasonably have had the knowledge of such an act being anticipated when they set out to free the two inmates with such lethal weapons that are in all likelihood to cause some harm to persons or property. The fact that the appellants could comprehend the happening of such an act was sufficient to prove a common object, therefore, making them all guilty of the offence of murder as they were all part of the unlawful assembly. This shows that active participation or premeditation is not essential to be proved for applying this section to any case.

CONCLUSION

On the evaluation of the case laws and the various aspects of offences relating to complicity, one can conclude that both the sections discussed i.e., Section 34 and 149 are provisions that are to be read with other criminal sections to ascertain the liability of several persons who have participated in the commission of the same offence. From caselaw 1 and 2, we can say that

²⁰ *Ibid*

²¹ *Ibid*

‘common intention’ can be proved in a crime using section 34 which required two or more persons who perform the crime together to attain the common intention as culled out from the aspects of pre-meditation and behaviour pre and post-commission of the crime. The scope is narrow in the sense that, the threshold of ‘intention’ has to be met to apply this section as it attached a higher degree of culpa.

Section 149 in comparison has a broader scope as inferred from caselaw 3 as the requisite mental aspect here is of ‘knowledge that in all likelihood’, meaning that the offence should have been foreseeable from the perspective of a reasonable person belonging to an unlawful assembly which comprises five people or more. This section does not require participation or premeditation to be used as all persons who knowingly become a part of such an unlawful assembly are considered equally guilty of the crime which is committed to achieving the common objective of the group. ‘intention’ and ‘knowledge’ have different degrees of punishments attributed to them, the former having a stricter one than the latter. Thus, these provisions aid the Courts to take up cases of offences committed by multiple persons more efficiently and fairly to decide their culpability based on the facts and circumstances of the particular case.