IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR
(Shariat Appellate Jurisdiction)

PRESENT:

RAJA SAEED AKRAM KHAN, C.J.
RAZA ALI KHAN, J.

CRIMINAL APPEAL Nos. 05 & 07 OF 2025
Civil Misc. No. 05 of 2025
(On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 26.12.2024 passed in crim. Appeals no. 14, 17 & 17of 2019, and Crim. Reference No. 99 of 2019)

Abid Majeed,
(In Crim. Appeal No. 05/2025)

Muhammad Zuabir and another.
(In Crim. Appeal No. 07/2025)

…Appellant(s)

VERSUS

Tanveer Hussain and others.
(In Crim. Appeal No. 05/2025)

Abid Hussain and another.
(In Crim. Appeal No. 05/2025)

…Respondent(s)

Appearances:

For the complainant-Appellant(s):	Raja Khalid Mehmood Khan, Advocate.
For the convict-respondent(s):	Ch. M. Ilyas, Advocate.

For the State: Mr. Ahmed Saad Khan, Asstt. Advocate-General

Date of hearing: 21.01.2026

JUDGMENT:

***Raza Ali Khan, J*:-** Both appeals assail a consolidated judgment dated December 12, 2024, rendered by the Shariat Appellate Bench of the High Court (*hereinafter to referred as 'the High Court'*) in Criminal Appeals Nos. 14, 15 and 17 of 2019, and Criminal Reference No. 99 of 2019.

2. The succinct factual backdrop of the present appeals is that the convict-respondents, namely Talib Hussain (*since deceased*), Zubair and Tanveer Hussain, along with accused Muhammad Jameel, were tried before the Additional District Criminal Court Sehnsa, for offences punishable under sections 302, 341, 34, 427 and 109 of the APC, read with section 15(2) of the Arms Act, arising out of the murder of Chaudhary Abdul Majeed.

3. According to FIR No. 41 of 2018, lodged by the complainant Abid Majeed, the occurrence allegedly took place on April 05, 2018, at about 7:45 a.m., when the complainant, the deceased and other companions were travelling to attend Court proceedings at Sehnsa in vehicle No. FDN-9853. Upon reaching Chatter, their passage was allegedly obstructed by the accused, who were armed and acting in furtherance of a common design. It was alleged that Zubair struck the windscreen vehicle, Talib Hussain fired a shot from behind which struck the deceased, while Tanveer resorted to indiscriminate firing, as a result whereof Abdul Majeed sustained fatal injury and later succumbed at Tehsil

Headquarter Hospital Senhsa. The motive was attributed to prior litigation and entrenched enmity between the parties. The occurrence was claimed to have been witnessed by the complainant and other accompanying persons.

4. Upon completion of investigation, a report under section 173 Cr.PC was submitted before the trial Court against Talib Hussain, Zubair, Tanveer and Muhammad Jameel, whereas the remaining nominated persons were discharged under section 169 Cr.P.C. The accused were examined under 265-D, Cr.pc wherein they pleaded not guilty. The prosecution then examined thirty witnesses, after which statements of the accused were recorded under section 342 Cr.P.C. wherein the allegations were denied and false implication on account of hostility was alleged. The trial culminated in judgment dated October 17, 2019, whereby Talib Hussain, Zubair and Tanveer Hussain were convicted. Talib Hussain was sentenced to death as Tazir under section 302(b), APC; Tanveer Hussain was awarded life imprisonment under 302(b) and 34 APC along-with fine of 500,000/- under section 544-A; and Zubair was sentenced to ten years' simple imprisonment under section 34, APC, along with compensation of Rs. 300,000/- under section 544-A, Cr.PC, ancillary sentences under the Arms Act and allied provisions. The benefit of section 382-B of the Cr.P.C. was extended to all convicts, whereas, Muhammad Jameel was acquitted. Aggrieved both sides preferred appeals and a death reference was transmitted to the learned High Court for confirmation of death sentence. The learned High Court, through the judgment dated December 26, 2024, held that Appeal No. 14 of 2019 had abated due to death of convict Talib Hussain and was dismissed with respect to Zubair,

rendering the death reference infructuous, which was accordingly answered in the negative. Appeal No. 15 of 2019 was dismissed for want of merit, whereas Appeal No. 17 of 2019, preferred by Tanveer Hussain, was partly allowed whereby his sentence of life imprisonment under section 302(b) APC was substituted with ten years' simple imprisonment under section 34, APC, while the remaining sentences awarded to him regarding compensation of Rs. 500,000/ under section 544-A Cr.PC, three years simple imprisonment along with fine of Rs. 10,000 under section 15(2) of the Arms Act and three months simple imprisonment under section 341 APC, were maintained.

5**.** Raja Khalid Mehmood Khan, counsel for the complainant-appellant, assailed the judgments dated October 17, 2019 passed by the learned trial Court and December 26, 2024 by the High Court, contending that the same are manifestly unlawful, perverse and irreconcilable with the evidence as well as the settled principles governing criminal jurisprudence. It was argued that the reduction of sentence awarded to respondents No. 1 & 2, Tanveer Hussain and Zubair, and the acquittal of respondent No. 3, Muhammad Jameel, were wholly unjustified and unsustainable in law. The learned counsel laid particular emphasis on the role of Jameel, submitting that he remained in persistent communication with the principal offenders, actively instigated the commission of the offence, and was expressly nominated in the FIR as well as in subsequent statements. His acquittal, it was urged, reflects a patent disregard of the evidence on record. The impugned judgments were further criticised for overlooking material facts, misappraising the probative worth of the prosecution

witnesses, and exercising discretion in an arbitrary manner, culminating in acquittals and sentence reductions unsupported by law. The impugned judgments were asserted to suffer from misreading and non-reading of evidence, warranting corrective intervention by this Court.

6. Ch. Muhammad Ilyas, appearing for the convict-respondents, defended the judgment dated December 26, 2024, submitting that the learned High Court lawfully reassessed the evidence in its proper perspective and rightly recalibrated the criminal liability to the extent of convicting Zubair. It was further submitted that the acquittal of Muhammad Jameel was based on sound judicial reasoning, flowing from material deficiencies in the prosecution case and the absence of direct, credible, or legally admissible evidence establishing his abetment. It was argued that Muhammad Zubair was equally entitled to acquittal, as the prosecution manifestly failed to establish his culpability beyond reasonable doubt. The learned counsel contended that the case was mischaracterized at its inception by invoking section 302 APC, despite the conspicuous absence of the essential ingredients of section 300 APC. In particular, it was emphasized that the FIR itself alleged indiscriminate firing at the vehicle rather than a deliberate and targeted shot aimed at the deceased, thereby negating the requisite *mens rea* for the offence of murder. The prosecution case was further assailed on account of material contradictions, internal inconsistencies, and subsequent embellishments, including irreconcilable versions regarding the manner of firing, the direction and trajectory of shots, and the seating position of the deceased. It was submitted that the site plan neither appears to have been prepared at the instance of the

alleged eyewitnesses nor conforms to the ocular account, thus casting serious doubt on the presence and credibility of the purported eyewitnesses, all of whom were admittedly closely related to the deceased and harbour animosity towards the accused. The evidence, it was urged, is partisan in character and inherently falls short of the standard required for sustaining a conviction in a capital charge. It was further contended that the prosecution failed to establish prior concert, common intention, or shared design, which are indispensable to attract the application of section 34 APC. In the absence of proof of injury, facilitation, instigation, or abetment, the appeal preferred by the complainant was urged to be dismissed for want of lawful justification.

7. Mr. Ahmed Saad Khan, Assistant Advocate-General, substantially aligned himself with the submissions advanced on behalf of the complainant-appellant and contended that the learned High Court impermissibly interfered with the well-reasoned judgment of the trial court, which, according to him, was rendered in strict conformity with the governing law and the factual matrix of the case.

8. We have heard the counsel for the parties and carefully scrutinized the record placed before us. FIR No. 41 of 2018 was registered against the convicts, and upon completion of the investigation, a report under section 173 of the Cr.P.C. was submitted before the competent Court. During the trial, the prosecution examined thirty witnesses, whereafter convictions were recorded and sentences imposed as already noted hereinabove. The proceedings *qua* Talib Hussain (principle accused) stood abated on account of his

demise during pendency of the proceedings before the High Court and prosecution against him stood abated. The controversy, therefore, stand confined to the roles attributed to the remaining convicts, namely Tanveer Hussain son of Adalat and Muhammad Zubair son of Muhammad Bashir. According to the prosecution version set out in the FIR, it was alleged that both accused, acting in concert and armed with lethal weapons, obstructed the road by placing a motorcycle across it, compelled the rear-seat occupants to disembark, and that Zubair damaged the vehicle by striking its windscreen with a stick, while Tanveer resorted to indiscriminate firing with a pistol, whereafter all three accused including Talib Hussain made good their escape. The prosecution further attributed the occurrence to antecedent enmity, asserting it to be motivating factor behind the commission of offence.

9. The learned trial court, *inter alia*, invoked section 34 APC, sentencing Tanveer Hussain to life imprisonment and Muhammad Zubair to ten years' simple imprisonment. The learned High Court while maintaining the premise common intention, modified Tanveer Hussain's sentence from life imprisonment to ten years' simple imprisonment. The pivotal issue now arising for determination is whether the doctrine of common intention was lawfully attracted, particularly when no firearm injury was attributed to Tanveer Hussain or Muhammad Zubair, and the sole fatal shot stood established to having been fired by Talib Hussain, whose conviction and sentence abated owing to his demise during pendency of proceedings.

10. The first issue requiring adjudication is whether the trial Court and the appellate Court were justified in invoking section 34, APC, on the basis of the evidence on record. Learned counsel for the convicts contended that the sentence of ten years' simple imprisonment under section 34, APC, is legally unsustainable, as the prosecution failed to establish the elements of common intention. This contention merits examination strictly on the touchstone of the evidentiary record, for in the absence of proof meeting the statutory threshold envisaged by section 34, APC, the imposition of vicarious criminal liability cannot be sustained.

11. In order to determine whether section 34, APC, is attracted to the facts of the present case, it is imperative to examine the statutory provision and assess its applicability in light of the proven facts, surrounding circumstances, and the evidence adduced during trial. For facility of reference and proper appreciation, the relevant provision is reproduced hereunder: -

> "**34. Acts done by several persons in furtherance of common intention.** – When 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."

12. The provision reproduced above, embodies the doctrine of joint criminal liability, predicated upon the existence of common intention. It postulates that where a criminal act is committed by several persons in furtherance of a shared design, each participant is rendered liable as if he had himself committed the act. The gravamen of section 34, APC, lies not in the individual overt act of each accused but in the existence of a pre-arranged plan or prior meeting of minds, which may be formed on the spur of the moment but must nevertheless

precede or accompany the commission of the offence. Mere presence at the scene, passive association, or subsequent conduct without more, is insufficient to attract the application of section 34 APC, unless coupled with cogent and convincing evidence of conscious concurrence in the criminal design. The burden squarely rests upon the prosecution to establish such common intention beyond reasonable doubt, either through direct evidence or by drawing irresistible inference from the conduct of the accused, the manner of occurrence, and the surrounding circumstances. While the provision dispense with the necessity of proving identical roles played by each accused, it nevertheless demands proof of a shared purpose and unity of intention. In elucidation of the scope and contours of section 34, APC, the Hon'ble Supreme Court of Pakistan, in its authoritative pronouncement in *Ahtisham Ali v. The State*[1], has succinctly articulated the governing principles as under:—

> "In order to constitute an offence under Section 34 PPC, it is not required that a person should necessarily perform any act by his own hand, rather the common intention presupposes prior concert and requires a prearranged plan. If several persons had the common intention of doing a particular criminal act and if, in furtherance of their common intention, all of them joined together and aided or abetted each other in the commission of an act, then one out of them could not actually with his own hand do the act, but if he helps by his presence or by other act in the commission of an act, he would be held to have himself done that act within the meaning of Section 34 PPC."

13. In another case titlted *Shoukat Ali vs. The State*[2]*,* the Hon'ble Supreme Court of Pakistan, while expounding the jurisprudential basis of section 34 PPC, further observed after surveying earlier precedents as under: -

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[1] [2023 SCMR 975]
[2] PLD 2007 SC 93]

"We would like to discuss the import and objects of section 34, P.P.C. The main object for the enactment of section 34 is to meet a case in which it may be difficult to distinguish between the acts of individual members of a party or to prove exactly what part was taken by each of them. The reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing the act. The nature of the offence committed by an accused depends upon the act done by him and the effect produced by it, and the sole object of this section is to lay down what act will be deemed to be done by the conspirators. This section is not a punitive section and does not enact a rule of evidence but enacts a common law principle of substantive law' 1935 Cr.LJ 1393, 1953 all.

214. "This section embodies the common-sense principle that if two or more persons intentionally do a thing jointly it is just the same as if each of them had done it individually. If two or more persons combine in injuring another in such a manner that each person engaged in causing the injury must know that the result of such injury may be the death of the injured person, it is no answer on the part of anyone of them to allege and perhaps prove that his individual act did not cause death, and that by his individual act he cannot be held to have intended death. Everyone must be taken to have intended the probable and natural results of the combination of acts in which he joined. All are guilty of the principal offence, not of abetment. But a party not cognizant of the intention of his companion to commit murder is not liable, thought in his company, to do an unlawful act." In re Basappa (Vol 51 Cr.LJ 1950). "common intention implies acting in concert, existence of a pre-arranged plan which is to be proved either from conduct or from circumstances or from any incriminating facts. The leading feature of this section is the element of participation in action. It embodies a principle of joint liability in the doing of a criminal act and the essence of that liability is the existence of a common intention." (Sitaram v. State (Vol. 59 1958 Cr.LJ 1380) Pandurang, Tukia and Bhillia v. The State of Hyderabad 1955 SCR 1083. It may not be out of

place to mention here that "the section contemplates the case where more persons than one share in the doing of the act and it is necessary to bear in mind the definition of 'act' given in S.33 and also the provisions of Ss.35, 37 and 38. The term 'act' contemplates a series of done by several persons, some perhaps by one of those persons and some by another, but all in pursuance of a common intention. A criminal' act means that unity of criminal behavior 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" NGA TUN BAW and another v. Emperor 1907 UBR (P.C.) Crl.LJ 205. "The words 'in furtherance of the common intention of all' have introduced, as an essential part of the section the element of a common intention prescribing the condition under which each might be criminally liable when there are several actors. 'Common intention' is an intention to commit the crime actually committed and each accused person can be convicted of that crime, only if he has participated in that common intention. The common intention contemplated by this section is anterior in time to the commission of the crime., and does not refer to the time when the act is committed.

It is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most case it has to be inferred from his act or conduct or other relevant circumstances of the case. Same or similar intention must not be confused with common intention; the partition which divides "their bounds" is often very thin; nevertheless, the distinction is real and substantial, and if over looked, will result in miscarriage of justice. The inference of common intention should never be reached unless it is a necessary inference deducible from the circumstances of the case. Common intention does not mean similar intention of several persons. To constitute common intention it is necessary that the intention of each one of them be known to the rest of them and shared by them. The common intention ought to be determined from such known facts and circumstances which existed before the commencement of the criminal act as the criminal act itself is committed in furtherance of that

> common intention." Muklesure Rahman and another v. The King (Vol. 51 1950 Cr.LJ 945)
> It must be proved that criminal act was done by various persons.
> (b) The completion of criminal act must be in furtherance of common intention as they all intended to do so.
> (c) There must be a pre-arranged plan and criminal act should have been done in concert pursuant whereof.
> (d) Existence of strong circumstances (for which no yardstick can be fixed and each case will have to be discussed on its own merits) to show common intention.
> (e) The real and substantial distinction in between 'common intention' and 'similar intention' be kept in view."

14. Section 34, APC is structured upon four indispensable constituents: first, the commission of a criminal act; second, participation of more than one person in the execution of such act; third, the act having been carried out in furtherance of the common intention of all participants; and fourth, that each participation is rendered liable in the ame manner as if the act had been committed by him individually. The foundational requirement is that the act complained of must constitute an offence under the law. The second element postulates plurality of actors, thereby excluding solitary conduct from the ambit of provision. The third element, "in furtherance of the common intention of all," is the pivotal and determinative component, for it delineates the circumstances in which vicarious criminal liability may lawfully be fastened upon multiple offenders. For attracting section 34, APC, it must be affirmatively established that the criminal act was the product of a shared design, prior concert, or unity of purpose amongst the accused, whether formed in advance or contemporaneously with the occurrence. In the absence of

demonstrating such convergence of intent, the provision cannot be lawfully invoked. The Apex Court of Pakistan, while interpreting this essential ingredient, has authoritatively expounded the governing principles in *Akhtar Khan and others v. The State*[3]. The relevant extract thereof is reproduced hereunder for facility of reference and proper appreciation.

> "17. The scope and implication of section 34, P. P. C. were also considered in case Metho v. State (PLD 1963 Kar. 1). It was held by their Lordships of the Division Bench that a bare reading of section 34 of the Penal Code, 1860, made it clear that it was the furtherance of the common intention and not the common intention of all the persons that made each of them liable. Where, therefore, the common intention of M and A was to commit robbery but in the course of committing that criminal act, murder was committed by M, it was held that although the common intention of both M and A was to commit robbery the murder committed by M was in furtherance of common intention of committing robbery and, therefore, A along with M was equally liable for the murder committed by M.
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> 18. In Nazir and others v. Emperor (49 Cr. L J 271) an Allahabad case learned Judges of the D. B. Made some important observations which have a direct bearing on the case before us. In that case, the common intention of the accused was to abduct a woman and beat her husband with tabal and lathi so as to disable him from successfully obstructing the intended abduction, and the beating resulted in the death of the husband. After discussing considerable case-law and particularly the conflict of the views on the point it was held that the use of tabal and lathis as weapons of attack should impute the knowledge of the likelihood of the causing of injuries which may be simple, grievous or such as be sufficient in the ordinary course of nature to cause death. As the common intention of the accused extended to give a good beating to the husband without any clear conception of the precise nature of the injuries which would be caused, all the accused persons were liable for the offence under section 302, P. P.

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[3] [PLD 1972 SC 19]

C. In view of the provisions of section 34,P. P. C. And it was not necessary that the common intention must have been to cause death or such other intention as is mentioned in section 300, P. P. C. Regarding the existence of common intention, relying on A I R 1945 P C 118, it was held that the common intention ought to be determined from such known facts and circumstances which existed before the commencement of the criminal act as the criminal act itself is committed in furtherance of that common intention. Precise observations of their Lordships of Privy Council relied upon in this Allahabad case read as follows:--

"Section 34 lays down a principle of joint liability in the doing of a criminal Act. The section does not say `the common intention of all' nor does it say" an intention common to all. Under the section, the essence of that liability is to be found in the existence of a common intention animating the accused lending to the doing of a criminal act in furtherance of such intention. To invoke the aid of section 34 successfully, it must be shown that the criminal act complained against was done by one of the accused persons in the furtherance of the common intention of all. If this is shown, then liability for the crime may be imposed on any one of the persons in the same manner as if the act were done by him alone. This being the principle, it is clear to their Lordships that common intention within the meaning of the section implies a pre-arranged plan, and to convict the accused of an offence applying the section it should be proved that the criminal act was done in concert pursuant to the pre-arranged plan. As has been often observed, it is difficult if not impossible to procure direct evidence to prove the intention of an individual; in most cases it has to be inferred from his act or conduct or other relevant circumstances of the case."

Yet another observation made by their Lordships of the Privy Council in 52 Cal. 197 and relied upon- in the Allahabad Judgment may be advantageously reproduced :-

"Section 34 deals with the doing of separate acts, similar or diverse, by several persons; if all are done in furtherance of a common intention, each person is liable for the result of them all, as if he had done them himself, for `that act' and `the act' in the

latter part of the section must include the whole action covered by `a criminal act' in part I, because they refer to it.

As observation quoted in the Allahabad case of "Nazir and others" from (14 Lah. 814) is also relevant and may be reproduced with advantage:

"In the present instance, the common intention of the culprits was obviously to commit robbery and in furtherance of that intention different acts were committed by different persons. Sardara Singh had gone to fetch Kishan Singh for carrying out that common intention while Indar Singh shot down Kehr Singh in furtherance of the same. The decision to shoot Kehr Singh was taken by Indar Singh alone but there can be no doubt that it was taken in furtherance of the common intention. The object of Indar Singh apparently was to strike terror and disarm all opposition and in this he succeeded; for there was no attempt to offer any effective resistance to the robbers thereafter."

19. For the contrary view wherein a restricted interpretation was placed on section 34, P. P. C. By learned Judges of the Allahabad D. B. Reference was made to A I R 1935 Lab. 97 ; 50 I C 337, 19 Madras 483 and 8 Rang. 603 (F. B.). In the first of these cases which is a Lahore authority, was held by their Lordships :-

"In order to make a person constructively liable for murder under section 34, Penal Code, it must be proved that he had the intention of committing murder in common with the person or persons who actually committed it and who were his companions in the joint criminal act or enterprise."

In 50 I C 337, it was observed:-

"It is obvious that the mere fact a man may think a thing likely to happen is vastly different from his intending that that thing should happen. The latter ingredient is necessary under section 34, the former by itself is irrelevant to the section. It is only when a Court can with some judicial certitude hold that a particular accused must have pre-conceived or premediated the result which ensued, or acted in concert with others in order to bring about that result, that section 34 may be applied."

In the Rangoon case (Full Bench), the relevant observation reflecting the majority view was as follows :-

"The common intention referred to in section 34, 1. P. C. Is an intention to commit the crime actually committed and each accused person can be convicted of that crime only if he has participated in that common intention."

Reference was made to yet another

Full Bench authority of 13 Rang. 210. The question for determination before their Lordships was as follows

"When less than five people go out armed to commit robbery without any pre-arranged intention to commit murder, but in the course of the robbery one of the robbers liable to be convicted under section 302, read with section 34, 1, P. C. When there is no evidence to show that they committed any further act which would render them directly liable as abettors?"

It appears that no direct answer to the above question was given, Page C. J. And Mya Bu, J. However approved the following observations made in A I R 1924 Cal. 257 : --

"A common intention to carry out an unlawful design at all costs, even at the cost of overcoming resistance, or evading capture by taking life, is sufficient. Without mincing matters the presumption of a common intention to add murder, if necessary, to robbery, is not easily avoided, when all, or some to the knowledge of the rest, of those engaged in the enterprise are proved to have carried fire-arms, and fire-arms have been used with fatal effect."

In I L R 14 Luck. 328 the view taken was that the common intention referred to in section 34 was an intention to commit the crime, which vas actually committed. For this view reliance was placed on A I R 1935 Rang. 299 and I L R 8 Rang. 603. Reference was also made in this regard to the observations of Mahmood, J. In 1887 A W N 236 reproduced in the later part of this judgment.

21. Having considered the arguments for and against in the conflict of views referred to earlier their Lordships of the Allahabad High Court in the case 49 Cr. L J 271 subscribed to the first view and observed as follows :-

"We have to see what was the common intention before a person has commenced the criminal Act. It may be that to determine such a common intention we may not have the direct evidence of what passed

between them before the commencement of the transaction and have to conclude that intention from their conduct. If so the conduct of all such persons has to be looked into. If the intention of the actual doer of the fatal act is to be determined from his conduct alone, the intention of the others will normally be gathered from their respective conduct and as they did not do the fatal act, their intentions will not ordinarily be determined to be the same as the intention of the actual doer of the fatal act. We have to determine the original common intention and then to see whether the actual doer of the fatal act acted in furtherance of that intention or acted quite suddenly and beyond the common intention. We have not to see the intention behind the commission of the fatal act only which alone is not the criminal act in view of what their Lordships of the Privy Council held in 52 Cal. 197 and surely the fatal act alone is not equivalent to the offence whose ingredients include the physical act, its consequence and the intention or knowledge with which the physical act was performed. In our opinion, section 34 refers to a physical act only. Of course the physical act contemplated should be criminal, that is, should be what is considered a crime, which is not defined in the Code and should mean a thing which ought not to be done and which affects the State in addition to the individual against whom the act in done."

22. In 47 Cr. L J 1006, it was observed by a Division Bench of the Sind Chief Court as follows:--

"It is only when it is a fair inference from the evidence that a particular accused must have intended the result which ensured, and acted in concert with others in bringing about the result, that the section may properly be applied. Where it is clear that the common intention of the party of the accused was not to cause the death of the deceased or even to cause grievous hurt to him and that the common intention did not extend further than causing hurt to the men of the complainant's party, the accused ought to be convicted under section 323, read with section 34 and not under section 304(1) read with section 34."

15. Coming to the merits of the case, a careful and dispassionate examination of the record reveals that, in the

initial report, the complainant alleged that at the time of the occurrence three accused persons, namely Talib Hussain, Tanveer Hussain and Muhammad Zubair, while armed with lethal weapons, intercepted the complainant's vehicle, mounted an assault, and by resorting to indiscriminate firing caused the death of Choudhary Abdul Majid. It was further alleged that Khalid, Zarab and Banaras facilitated and abetted the commission of the offence, whereas accused Jamil Ahmed and Azamaullah were subsequently nominated on the assertion that, prior to the incident on 21 March 2018, at *Namberdar* Asghar Hamad's house brother of the deceased, they had participated in acts amounting to instigation and cause provocation.

16. Turning to the evidentiary record, the ocular account furnished by the prosecution witnesses consistently established that the witnesses personally observed Abdul Majeed sustaining firearm injuries. The witnesses uniformly deposed regarding the presence of Talib Hussain, Tanveer Hussain and Muhammad Zubair at the spot, whereas the role attributed to accused Muhammad Jameel was confined merely to his alleged presence at *Paleran* where he was stated to be conversing on a mobile phone. The witnesses candidly acknowledged prior hostility and strained relations between the parties arising out of various FIRs and protracted litigation, a fact further corroborated by copies of eight FIRs forming part of the trial record of particular significance is the admitted circumstance that, shortly before the occurrence, the complainant Abid Majeed had assaulted Talib Hussain, resulting in registration of a criminal case, against him. This circumstance unmistakenly establishes the

existence of deep-seated animosity between the rival factions.

17. This background of hostility furnishes a plausible cogent and convincing motive for the occurrence. In the absence of such entrenched enmity, there appears to be no rational or credible explanation for the convicts to have intercepted the complainants vehicle at an isolated location, obstructed the road, assaulted the vehicle with strikes and resorted to indiscriminate firing resulting in the death of Abdul Majeed The connected conduct in blocking the passage, forcibly compelling the rear seat occupants to disembark generating fear and panic through gunfire and ultimately inflicting the fatal injury, unmistakably reflects the pre-existing grudge and a conscious design culminating in the loss of human life.

18. The motive thus stands firmly established, particularly in light of the prior assault upon Talib Hussain, which operated as a catalyst intensifying the animosity between the parties. While motive is essentially a mental and subjective element, it often constitutes a potent driving force impelling the commission of an offence. In criminal adjudication, factors such as the nature of the weapon employed, the severity of the injury caused, and the targeting of a vital part of the body are recognised indicators for discerning the intention and *mens rea* of the offender.

19. An additional circumstance of considerable value is the personal diary of the deceased. Its perusal discloses contemporaneous entries made from time to time, documenting apprehension arising from repeated altercations with the accused party and the deceased’s

expressed fear regarding threats to his life. These entries lend independent corroborative support to the prosecution's assertion that strained relations pre-existed the occurrence and ultimately culminated in the homicidal incident.

20. Significantly, the defence did not dispute the existence of prior FIRs and protracted litigation between the parties, nor did it produce any cogent material to substantiate a plea of false implication motivated by extraneous consideration. The presence of Tanveer Hussain and Muhammad Zubair at the place of occurrence stand established through the consistent and confidence inspiring testimony of four eyewitnesses, whose statements disclose no material contradiction with respect to the time, place, or manner of the incident. Their ocular account further receives corroboration from the recovery of a 30-bore pistol and a stick at the instance of the convicts. In this backdrop, we are satisfied that the invocation of section 34, APC was legally justified. However, keeping in view the mitigating circumstances emerging from the record, the sentence awarded to Tanveer Hussain was excessive, and its reduction by the learned High Court cannot be faulted on legal grounds.

21. In view of the foregoing discussion, both appeals filed by the rival parties, along with the connected miscellaneous application, are dismissed.

JUDGE **CHIEF JUSTICE**

Mirpur,
29.01.2026