
(2009) 09 SHI CK 0051
In the High Court Of Himachal Pradesh

Dheeraj Verma and Another	Vs	APPELLANT
State of Himachal Pradesh		RESPONDENT

Date of Decision : 02-09-2009

Acts Referred:

Arms Act, 1959 — Section 27
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) 09 SHI CK 0051

Hon'ble Judges : Surjit Singh, J; Surinder Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Surinder Singh, J.—The challenge in this appeal is to the judgment of conviction and sentence u/s 302 read with Section 34 of the Indian Penal Code, passed in S.T. No. 55 of 2003 on 30.12.05 by the learned Sessions Judge, Chamba, allegedly for causing two murders one of Smt. Kamini Verma @ Doli and another of her maternal uncle Rakesh Kumar on 28.7.2003, by gun shots by appellant Dheeraj Verma who was accompanied by his brother Deepak Verma. The appellants were sentenced as follows:

Under Section 302 read with Section 34 IPC Life Imprisonment and fine of Rs. 25, 000/- each; in default of payment of fine simple imprisonment for a further period of 2 years each.

Under Section 323 read with Section 34 IPC Simple Imprisonment for six months and fine of Rs. 1000/- each; in default of payment of fine simple imprisonment for a further period of one month each.

Under Section 27 of the Indian Arms Act. Rigorous Imprisonment for a period of two years each. Whether reporters of the local papers may be allowed to see the judgment? Yes.

2. In short, the prosecution story as emerges from the evidence on record can be stated thus. PW2 Arun Kumar Verma a Goldsmith, has his shop in Post Office

Chowk at Chamba. He had one daughter, named Kamini Verma @ Doli (deceased) and has a son Deepak Kumar (PW1). Arun Kumar aforesaid was residing with family in Mohalla Sultanpur in Chamba town. The appellant Dheeraj Verma hereinafter referred to be as ?A-1? and appellant Deepak as ?A-2?, were the residents of Gurdaspur (Punjab). Their father Shyam Lal was also a Goldsmith doing his business at Chamba and was residing in the tenanted premises of Arun Kumar Verma (PW2), with the accused persons. A-2 had been teaching Kamini Verma and Deepak Kumar (PW1), prior to the marriage of Kamini Verma.

2.1. As per the case of the prosecution, in the year 2002, A-1 along with his brother A-2 visited Arun Kumar (PW2) with a proposal to marry Kamini Verma, but he turned down such a proposal in the presence of his brother-in-law Rakesh Kumar (deceased).

2.2. Later Kamini was married, on 6.2.2003, to one Sh. Anmol Verma @ Munna, resident of Mukerian (Punjab). After their marriage, Kamini Verma visited her parental house on 28th July, 2003 around 5.30 a.m., during the ?Minjar fair? at Chamba.

2.3. PW3 Sonia D/o PW5 Sh. Chain Singh, R/o Chamba Town was married to the maternal uncle of Kamini named Rakesh Verma R/o Amritsar, way back in the year 1999. Said Smt. Sonia was invited by PW2 Arun Kumar to his house about 7/8 days prior to the arrival of Kamini. On 28.7.2003 Rakesh deceased and his wife Sonia both were present in the house of Arun Kumar (PW2). All of them took breakfast in the morning.

2.4. Around 10.30 a.m. PW3 Sonia, her husband Rakesh Kumar and Kamini Verma and PW4 Sumitri Devi, the grand mother of Kamini, were sitting in the bed room. Kamini Verma aforesaid after taking her breakfast went to the kitchen and her grand mother PW4 Sumitri Devi came out of the room to the courtyard. PW1 Deepak, the younger brother of Kamini Verma was cleaning his motorcycle nearby in the courtyard of his house. It is alleged that A-1 came armed with a loaded double barrel gun Ex.P9 alongwith his brother A-2, to the house of Arun Kumar (PW2). Both of them entered through the main gate inside the courtyard. Accused A-1, seeing Kamini fired two gun shots at her. The pellets of first shot hit her abdomen and second on her shoulder. PW4 Sumitri Devi made an attempt to catch them, but accused A1 hit her with the butt of the gun. In retaliation, she threw stone on him, which missed the aim. Both the accused ran towards the main gate. It is further alleged that accused A-2 supplied two cartridges to A-1. A-1 reloaded his gun and again made an entry in the courtyard. He noticed Rakesh Kumar (deceased), lifting the injured Kamini. He fired a shot at him, which also hit his abdomen. Thereafter both the accused persons fled away from the spot.

2.5. Both the injured persons Kamini and Rakesh Kumar, were immediately removed to zonal hospital Chamba. Rakesh Kumar succumbed to his injuries on

the same day at 12.30 p.m., in the hospital. Someone telephonically informed PW26 ASI Jog Raj of police-post Sultanpur, about the shooting incident. He recorded this information in daily diary Ex.PW25/A. He directed PW25 Mela Ram Head Constable to inform the superior officers and left to the place of incident. On reaching the hospital, ASI Jog Raj moved an application Ex.PW11/A, to the Senior Medical Officer whether Kamini Verma @ Doli was fit to make the statement and also for obtaining her MLC.

2.6. At about 12.20 p.m., the doctor attending her did not find Kamini fit to make the statement but around 1.00 p.m., on the same day, i.e. on 28th July, 2003, PW11 Dr. D.P. Dogra gave her treatment and found her fit to make the statement. To this effect, he made an endorsement on the application Ex.PW11/A mentioning the date and time thereon. Thereafter, her statement Ex.PW11/C was recorded in his presence by PW26 ASI Jog Raj. She put her thumb impression on her statement. She implicated both the accused persons aforesaid for committing the aforesaid offence. PW26 ASI Jog Raj made his endorsement on the said statement (Ex.PW11/C) and sent it for the registration of the case, on the basis of which FIR Ex.PW17/A was formally recorded u/s 307/34 of the Indian Penal Code. PW11 Dr. D.P. Dogra also sent a letter Ex.PW11/D to the SHO, Police Station, Sadar, Chamba alongwith a sealed object Ex.P25 found within the loops of intestine of the injured Kamini Verma.

2.7. Doctor Dogra (PW11), attending upon Kamini referred her to the Zonal Hospital, Dharamshala, but instead of taking her to Dharamshala, PW2 Arun Kumar, her father took her to Amritsar and got her admitted in ?Ram Saran Dass Kishsori Lal charitable hospital?, Amritsar, which is also known as ?Kakkar Hospital?, but she expired at about 4.00 a.m. on 1.8.2003. PW2 Arun Kumar telephonically apprised his younger brother, with a direction to further inform the police.

2.8. On getting the information, PW22 ASI Prem Chand, proceeded to Amritsar and contacted the doctor who attended deceased Kamini. The doctor handed over the clothes Exts.P1 to P3, worn by the deceased, to her father Arun Kumar, which were taken into possession vide memo Ex.PA, which were further handed over by him to Inspector/SHO Khub Ram on 2.8.03. He also prepared the Inquest report Ex.PW13/A. Thereafter moved an application for the autopsy of deceased Kamini Verma and after getting the postmortem report, the dead-body was handed over to PW6 Rakesh Kumar, the uncle of the husband of Kamini.

2.9. PW21 ASI Fauja Singh had also visited the zonal hospital where the dead body of Rakesh Kumar was lying. He prepared the inquest report Ex.PW21/A and moved an application Ex.PW12/E for his postmortem. He also took the photographs Exts.PW14/1 to PW14/14 of the dead-body. After obtaining the copy of the postmortem report, he handed over the dead-body to PW5 Chain Singh, his father-in-law.

3. On 28.7.2003, when the shooting episode took place, PW27 Inspector/ SHO

Khub Ram was on VIP duty. He came to know about the shooting incident at about 1.30 p.m. On getting the information, he also proceeded to the spot with a Photographer. He took over the investigation and also took the photographs Exts.PW15/1 to PW15/13. He collected the blood from the floor of the courtyard, where the alleged incident had taken place and sealed it in a container. He also found two caps Exs.PW15/1 and PW15/2 lying there. Three pallets were also found embedded into door and 35 pallets were found scattered on the floor, thus in all, 38 pallets (Ex.P15) alongwith two caps aforesaid were sealed in a parcel Ex.P12 and taken into possession vide memo Ex.PW15/B, in the presence of PW5 Chain Singh and Hardeep @ Khakka. He also recovered two spent cartridges Exts.PW16/1 and PW16/2 lying on the road, outside the gate of house of Arun Kumar. These were sealed in a parcel Ex.P16 and taken into possession vide memo Ex.PW5/C.

3.1. Inspector Khub Ram prepared the site plan Ex.PW27/B and deputed the police party alongwith PW1 Deepak Raj Verma, to put a ?naqa? at ?Bataluan Morh?, leading towards Khajjiar. He associated PW9 Sumit Rana and PW14 Shashi Kant, to identify the accused persons.

3.2. On 28.7.2003, at about 4.30 p.m., a scooter bearing registration No. PB 58-A-0285 came from Chamba side and was going towards ?Khajjiar?. A-2 was driving the scooter and A-1 was a pillion rider. He was having a Gun Ex.P9 with him. They were identified. The scooter was stopped. On checking the double-barrel gun, it was found loaded. There was one live cartridge Ex.P21 in one barrel and in another barrel, a spent cartridge case Ex.P22 was found. Inspector aforesaid measured the Gun and prepared its sketch Ex.PW9/A. It was sealed in parcel Ex.P8 and was taken into possession alongwith the aforesaid cartridges vide memo Ex.PW9/B. The scooter Ex.P30 alongwith its documents was also taken into possession vide memo Ex.PW9/A. The site plan Ex.PW27/C of the said place was prepared. The personal search of both the accused persons was conducted and the articles found on their personal search, were mentioned in the separate memos of both the accused persons prepared on spot. Inspector Khub Ram also recovered four live cartridges from the pocket of accused A1, which were sealed with seal impression ?R? and taken in to possession vide memo Ex.PW9/C.

3.3. Both the accused persons were arrested. Their father Shyam Lal was informed in Punjab. On 31.7.2003 accused A1 made a disclosure statement, in the presence of PW8 Kuldeep Kumar and Sushil Masih, with respect to his gun licence, which was got recovered by him alongwith 13 live cartridges contained in canvas belt vide memo Ex.PW7/A from his residence at Obari in Chamba town.

3.4. The gun was sent for the opinion of Ballistic Expert to the Forensic Science Laboratory alongwith the spent cartridges found on the spot and also in the gun at the time of its recovery. Vide report of the Forensic Science Laboratory Ex.PW27/E, the gun was found in working condition and the spent cartridges were opined to have been fired from the gun aforesaid. The plastic object, which

was found in the intestine of deceased Kamini Verma by Dr. Dogra was also sent for examination of the Forensic Science Laboratory. As per report Ex.PW27/H, it was a plastic cap containing some pellets and was having human blood thereon.

4. After obtaining reports of the Forensic Science Laboratory and on completion of the challan by the police, it was presented in the court and the accused persons were put on trial.

5. Both the accused persons were charge-sheeted for committing the murder of Kamini and Rakesh, in furtherance of their common intention. They abjured the guilt, pleaded innocence and led no evidence. However, to prove its case, the prosecution examined its witnesses. Accused persons took the stand that they were falsely implicated in the case due to business rivalry. At the end of trial, believing the eye witnesses, the learned trial court convicted and sentenced both the accused persons, as aforesaid, which is under challenge in this appeal.

6. Shri Vinay Thakur, learned Counsel for the appellants forcefully argued that the accused A2 did not share common intention to commit the alleged offence. He had no animus to kill Kamini Verma and further that he was not at all concerned with the alleged incident. The story of supplying the cartridges by him to A-1 was preposterous and incredible, which was readily accepted by the learned trial court without any cogent evidence on record. Further that the alleged motive imputed to the accused persons of refusal of marriage by deceased Kamini Verma is also incorrect. The accused persons would not have gained anything by killing Kamini or Rakesh Verma. The evidence led by the prosecution is illogical, incredible, tainted, interested, partisan and discrepant, which does not inspire confidence. The story of apprehending the accused persons as alleged is also false. The learned Counsel further ventilated that the dying declaration of the deceased Kamini is a concocted document and no reliance could be placed upon it. He took us through the evidence on record and tried to make his point that the accused were falsely implicated in the case because of the business rivalry.

7. Sh. Ramesh Thakur, learned Assistant Advocate General while supporting the findings of the guilt and sentence passed by the learned trial court argued that in the instant case, there is direct evidence of the occurrence. The witnesses of occurrence were subjected to the meticulous cross-examination, but nothing material could be extracted therefrom. In addition, there is also dying declaration of the deceased, which lends corroboration to the case of the prosecution. It is also argued that when A-1 had fired the gun shots, which caused death of two persons, he was assisted and accompanied by A2, who shared the common intention. Both of them came together and fled away together from the spot. Thereafter both were apprehended by the police while leaving the town on their scooter alongwith gun used in the crime, therefore, the impugned judgment is correct and cannot be faulted in any way.

8. We have given our thoughtful consideration to the rival contentions of the

parties and have carefully scanned and reconsidered the whole issue by reappraising the evidence, in order to come to a rightful conclusion, whether the findings arrived at by the learned trial court are against the weight of the evidence on record or in other words perverse.

9. Undisputedly, Smt. Kamini and Rakesh both died because of the gun-shot injuries. The prosecution case rests mainly on the alleged eye witnesses' account of the incident, given by PW4 Sumitri Devi, the grandmother of deceased Kamini, PW3 Sonia, the wife of deceased Rakesh Kumar and PW1 Deepak, younger brother of Kamini. Sumitri Devi was also injured in the incident by the gun butt blows given by A-1. She was medically examined by Dr. P.C. Sharma (PW10) on 3.8.03, which corroborates this fact.

10. The eye witness account given by Sumitri Devi was examined as PW4 before the learned trial court is required to be stated in necessary details for the purpose of appreciating the weighing the prosecution case. She was residing with her elder son PW2 Aun Kumar. She stated that Kamini @ Doli was married at Mukerian, to Shri Anmol Verma. She visited her parental house in the morning on 28th July, 2003. Rakesh Kumar and his wife PW3 Sonia had also come to their house. All of them were sitting in the bed room. At about 10.30 a.m., PW2 Arun Kumar after taking breakfast, went to attend his shop. PW1 Deepak Kumar was cleaning the motorcycle in the courtyard. She alongwith other guests were sitting in the room adjoining to the kitchen. After taking breakfast Kamini went to the kitchen to clean and upkeep the utensils. The moment she came out of the kitchen, the accused A-1 accompanied by his brother A-2, fired a gun shot. It hit in her abdomen and she fell down. When she tried to get up, accused A-1 fired another shot, which hit her shoulder. Thereafter, both the accused persons ran away and in that process, she (PW4) tried to catch hold of A-1, but failed in that attempt as the said accused hit her with the butt of gun in her abdomen, chest and wrist. But still, she chased them and tried to hit him with a small stone which missed the aim. She stated that Accused A-2 supplied two cartridges to accused A-1. Accused A-1, reloaded his gun and entered again in the courtyard. At that time, Rakesh Kumar was lifting Kamini. Accused A-1 fired the gun shot, which hit Rakesh Kumar in his abdomen. Thereafter both the accused persons ran away from the spot. She stated that they raised alarm and people had assembled there. Injured Rakesh and Kamini were taken to Chamba hospital in a vehicle, where, Rakesh Kumar died and Kamini was referred to Dharamshala hospital, but she was taken to Amritsar. She further stated that the accused persons nourished enmity, on account of the refusal of marriage by Kamini Verma with accused A-1.

11. In cross-examination, she admitted that the police reached around 11.00 or 11.30 a.m. on the spot. She admitted that her statement was recorded by the police. She also stated that she had visited the hospital and Rakesh Kumar expired in the hospital; however, Kamini was seriously injured, but according to her, she was talking normally in the hospital. She admitted that since Kamini was

serious, she was referred to another zonal hospital at Dharamshala. She did not remember whether portion ?A? to ?A? of her statement (Ex.DA) made to the police was got recorded by her, which is to the effect that Kamini was taken to ? Ram Saran Dass Kishsori Lal charitable hospital?, Amritsar on 1.8.2003, where she succumbed to her injuries and that she had also visited Amritsar. She further stated that she pointed out to the doctor at the time of her medical examination, the injuries sustained by her by the butt of the gun, but did not know whether it was recorded in her medical certificate or not. According to her, she did not tell the police with regard to handing over of the cartridges by A-2 to A-1, because police did not ask about it and this fact was disclosed by her only in the court, when asked.

12. PW10 Dr. P.C. Sharma had medically examined PW4 Sumitri Devi on 3.8.2003. The doctor noticed the multiple bruises, bluish in colour, which were of the size of 3 x 10 inches and all these injuries were simple in nature. He also found the bruises on the right wrist, left iliacfossa, left buttock and left toe, which were caused within 6 or 7 days with a blunt weapon. He issued MLC Ex.PW10/B. These injuries synchronized with the time of said incident, which as already stated above corroborates her version.

13. PW1 Deepak Kumar, a teenager boy and younger brother of deceased Kamini and PW3 Smt. Sonia Verma, wife of deceased Rakesh Kumar, both have given the same version and they corroborate the statement of PW4 Smt. Sumitri Devi, verbatim.

14. PW1 Deepak however, in his cross-examination, stated that the police came to his house at 4 p.m. His statement was recorded on the same day. He admitted that when his sister Kamini was taken to the hospital, her condition was critical but stated that she was able to talk and had also been talking at that time. Although, he was confronted with his statement recorded by the police u/s 161 of the Code of Criminal Procedure, wherein it was not mentioned that when his maternal uncle came to the courtyard, accused A-1 armed with gun was being followed by accused A-2, but this portion of his statement was neither put to the Investigating Officer nor proved in accordance with law. However, he categorically stated that the gun shot was fired at Kamini by A-1 from a distance of about 10 feet and on his maternal uncle from about 5 to 6 feet. According to him, he did not chase the accused persons on motorcycle as he was a small child. But he specifically stated that at the time of incident both the accused were present and ran away together.

15. PW3 Sonia stated in her cross-examination that when accused A-1 had fired at Kamini Verma, she was at a distance of about 2 feet from her and she alongwith her deceased husband and Sumitri Devi had tried to lift the body of Kamini. She admitted that the pallets also hit the door and the wall. It is important to note that she admitted the suggestion put to her by the learned defense counsel that Rakesh Kumar received the injuries when he was bending down to lift the body of Kamini Verma. She further admitted that on hearing first

gun shot, she reached near the deceased Kamini. But, she denied the suggestion that her husband was not agreeing to the proposal of accused A-1 to marry the deceased Kamini Verma and categorically denied that her husband had committed the suicide on that day. She further stated that A-2 was standing beside A-1 when the shooting incident took place as aforesaid. She also corroborates the version of PW4 Sumitri Devi that A-1 gave blows to her (PW4) with the butt of the gun. During the trial she also identified the gun Ex.P9 to be the same.

16. Further, there is another piece of evidence against the appellants which is dying declaration of the deceased Kamini, recorded by PW26 ASI Jog Raj after certifying her to be fit to make the statement by the doctor (PW11) in the hospital at Chamba. Dr. D.P. Dogra categorically stated that he had examined the injured Kamini and an application Ex.PW11/A was moved by the police whether she was fit to make a statement. She was examined by him and observed at 12.20 p.m. that she was unfit to make the statement. Further according to him this case was brought to the operation theatre on a stature trolley by some persons and he noticed fire arm serious injuries. Her general condition and pulse and B.P. was not recordable and there was injury on the left shoulder, which was totally shattered at the tip region. There were 10 x 10 x 5 cm bruise skin edges. He found that the greater trochanter of left humerus was visible and he also noticed the abdominal injuries. He recovered the pink plastic object from the wound and gave it to the police and started the treatment. The recovery was vital. The pulse rate increased to 120 per minute and the B.P. was 140/70 mm in the MIs of mercury. He further stated that Kamini Verma was fit to make the statement at 1.00 PM on 28.7.2003 and he made his endorsement on the application Ex.PW11/A to this effect. He further testified on oath that her said statement was recorded in his presence, which was jotted down by the ASI as stated by her. After admitting its correctness, she admitted her thumb impression on the said statement, which was attested by him and sent a letter Ex.PW11/D, to the SHO, Police Station Sadar, Chamba alongwith the object Ex.P25 found in the body duly sealed, which was identified by him during the trial.

17. In his cross-examination, although he has stated that Kamini was unfit to make the statement, when the application was moved at 12.20 P.M. by the police officer but stated that when she made the statement, she was mentally fit. He admitted the suggestion that life saving medicines were administered to Kamini and she recouped, thus he certified her fit to make the statement. This fact has been corroborated by PW26 ASI Jog Raj, but it appears that in the application, he tampered with the time given in the application from 12.20 p.m. to 1.00 p.m to match it with time given by the doctor. But its benefit cannot be given to the accused because the doctor (PW11) who has no animus against any of the accused persons had categorically stated that Kamini Verma gave her statement Ex.PW11/C when she was in fit state of mind in his presence. She categorically stated that accused A-1 had fired twice at her and the first shot hit her abdomen

and second at her left shoulder, she fell down. Her maternal uncle Rakesh Kumar rushed towards her, to whom accused A-1 also gave a shot and he too got wounded. She also mentioned that accused A-1 wanted to marry her, but his proposal was rejected and she was married somewhere else. Due to this he was nourishing ill-will against her and she also stated that accused A-2 was accompanying accused A-1 when he fired two bullets at her and one shot at her maternal uncle, which resulted causing injuries to both of them. A-1 and A-2 together had made murderous assault on them.

18. The evidence on record also reveals that the recovery of Gun Ex.P9 was effected from Accused A-1 as stated above which was loaded and on checking one cartridge was found alive and another cartridge case was fired through two caps Exts. P15/1 and P15/2 were also found lying on the spot by PW27 Inspector Khub Ram. Three pellets were embedded in the door and 35 pellets lying on the floor. All were taken in possession and sealed in a parcel Ex.P12. He also took into possession two empty cartridges Exts.PW16/1 and PW16/2 lying on the road vide memo Ex.PW5/C, which were sealed in parcel Ex.P16. Both the accused had tried to flee on their scooter No. PB 58-A-0285, but at about 4.30 a.m. they were apprehended. The Scooter was being driven by accused A-2 and Accused A-1 was a pillion rider, having gun Ex.P9 alongwith him. The gun and the cartridges were sent for forensic examination. Vide report Ex.PW27/F, the gun Ex.P9 was found capable of firing and the shots were fired through it. Further it was opined that the pellets of varying size and plastic belt Ex.P4 and P5 might have been fired from the empty cartridges Ex.2A/1 to Ex.2A/2. Three empty cartridges (two found on the spot and one in barrel of the gun) were sent for examination, which according to report might have been fired through the gun in question.

19. Learned Counsel has pointed out that during the inquest report PW9 Sumit Rana was stated to have been present at 4.30 p.m. then how he could be at the spot at the same time, which is about 5 K.M. where the accused persons were apprehended. Thus, the arrest of the accused persons shown at the said place was wrong and incorrect.

20. We have also examined this plea in the light of the evidence aforesaid. Even if the statement of Shashi Kant is ignored altogether from consideration, there is cogent and reliable evidence to show that the accused persons were apprehended while fleeing on a scooter, as stated by Inspector Khub Ram, who entertains no grudge against them.

21. On culling the evidence, we find that the offence charged against both the accused stands proved beyond doubt. The contention of the learned Counsel for the appellant that accused A-2 was not sharing common intention to commit the crime with the accused A-1 is worth rejecting.

22. The Supreme Court in *Shashi Mohan v. State of M.P.* AIR 2008 SCW 4984 observed as under:

Under the provisions of Section 34 IPC the essence of the liability is to be found

in the existence of a common intention animating the accused leading to the doing of a criminal act in furtherance of such intention. As a result of the application of principles enunciated in Section 34, when an accused is convicted u/s 302 read with Section 34, in law it means that the accused is liable for the act which caused death of the deceased in the same manner as if it was done by him alone. The provision is intended to meet a case in which it may be difficult to distinguish between acts of individual members of a party who act in furtherance of the common intention of all or to prove exactly what part was taken by each of them. As was observed in *Chinta Pulla Reddy and Others Vs. State of Andhra Pradesh*, Section 34 is applicable even if no injury has been caused by the particular accused himself. For applying Section 34 it is not necessary to show some overt act on the part of the accused.

23. In fact Section 34 of the Indian Penal Code gives a statutory recognition to the common sense principle that if two or more persons intentionally do a common thing jointly, it is the same as if each of them had done individually. It is clear from Sections 34 and 33 of the Penal Code that the term 'criminal act' refers to more than a single act, and would cover an entire series of acts, where these acts are done in succession and are closely connected in such a way that they cannot be separated from each other, with different intentions being assigned to each acts. Once the participation of the co-accused is established Section 34 is at once attracted.

24. When the background facts are considered in the light of legal principle set out above, the position becomes clear that A-2 and A-1 came together from their residence at Obari in Chamba Town, armed with the DBBL gun which was loaded. A-2 was aware of the intention and purpose of the visit of A-1 in the house of PW2 Arun Kumar. It is not the case of A-2 that he met A-1 by chance on the spot. Further, the shooting incident took place in the presence of A-2 in the house of PW2. A-2 did not try to stop A-1, rather his subsequent conduct facilitating accused A1 to escape on his scooter establishes the ingredients of Section 34 above and these circumstances clearly establishes sharing the common intention with Accused A-1 by him. Therefore, this contention of the learned Counsel is devoid of any merit, therefore, we reject it.

25. In the above stated position, we are constrained to hold that both the appellants committed the murder of Smt. Kamini and her maternal uncle Rajesh Verma, in the house of PW2 Arun Kumar by DBBL Gun in furtherance of their common intention, Therefore, there is no merit in this appeal, hence dismissed.