CHAPTER-VII

IMPLIED CONSENT BY ACCESSARIES BEFORE, AT AND AFTER THE CRIME
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Introduction

Under joint liability at least two persons are involved, the larger number of persons may be up to unlimited numbers. Numerous persons suffer joint criminal liability on account of the illegal act done by them jointly or they are related with the act more or less role.

In cases of joint liability, it is not necessary that the quantum of punishment be provided equal to all accused. Unequal punishment may also be provided according to the unequal role played by the different accuseds but one thing is sure that all the persons participated the illegal act. It is the joining in an act which makes all the accused jointly liable. In criminal law three types of Accessory are recognised viz—

(a) Accessary before the crime
(b) Accessary at the crime
(c) Accessary after the crime

Accessary before the crime are Abettor, conspirator. Accessary at the time of doing crime are accused of joint liability (i.e. the real doer of the crime). Accessary after the crime are generally harbourer, assist in escape etc.

Generally the accuseds who share in the commission of the crime (i.e. Accessary at the crime) are punished with equal punishment. But Accessaries before the crime can be punished with unequal punishment particularly when one person is abettor other is doer. Accessaries after the commission of the crime are punished with lesser punishment in comparison with the actual doer.
Hence all the persons who joined either before or at or after commission of the crime are companion of each other and attract criminal liability.

In both of the above heads one thing is sure that there had been consent of each other to discharge the role agreed upon by the different accuseds. In other words there had been concern of each accused in commission of the crime or thereafter to escape the criminals. Whatever role discharged by each accused under the above two heads had been the result of consent expressed by all to do the act. It is the will of two or more persons which will constitute the existence of consent in involvement of the crime. *Mens rea* of one persons can not held liable the other person until the other persons consented to follow up the *mens rea*.

Here study is perused under following heads viz–

I. Consent in cases of Accessaries at the crime (i.e. Accuseds under joint liability)

II. Consent in cases of Accessaries before and after the crime.

In the above heads, we will see the role of consent in holding the criminal liability. Whether upto what extent the consent of co-accused holds him liable alongwith other co-accuseds. The study as follows –

I. **Implied Consent by Accessaries at the crime (i.e. Accuseds under joint liability or group liability)**

   The relevant Sections described under joint liability are 34-38, 114, 149, 396 and 460 of The Indian Penal Code. These are the sections where joint criminality liability is determined hence equally punished as if the offence has been committed by him alone.
As regards, scope of consent in the above sections, first of all it is necessary here to study Section 13 of the Indian Contract Act which runs as under—

"Two or more persons are said to consent when they agree upon the same thing in the same sense."

It means the concept of consent embodies the agreement of two or more persons about doing an act in the same sense which has been desired by the parties.

In Section 90 of I.P.C., the meaning of consent is missing which is supplemented by Section 13 of the contract act. In I.P.C. (Section 90) the emphasis is upon a valid consent equivalent to term 'free consent' in Section 14 of the Indian Contract Act but basically what is consent? Or in other words what are the contents (or elements) of the 'consent' are totally missing (unexplained) in I.P.C. but the answer is with Section 13 of the Indian Contract Act which describes its elements as under:

(i) two or more persons
(ii) are said to consent
(iii) agree upon the same thing
(iv) in the same sense.

Hence the terminology of 'consent' has same meaning in section 90 of the I.P.C. and in Section 13 of the Contract Act whereas a little difference exists between valid consent required under Section 90 of I.P.C. and free consent described in Section 14 of the Indian Contract Act.

In all cases of joint liability all the co-accuseds who have participated in a crime working under common intention or common object deserve equal criminal liability. Now we consent is a specie of the mens-rea. In joint liability there is mens rea of each and everyone mutually agreed in toto which
can also be called mutually consented, without any reservation of any member (i.e. in same sense).

Now we will study relevant sections under joint liability—

(i) Acts done under common Intention (Section 34).

When two or more persons have consented to do an act under common intention, the principle of equal criminal liability will apply as enunciated in Section 34 of I.P.C. which runs as under—

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.

Section 34 embodies principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. It is one of the provisions of the Code which operate to extend the liability to other persons. It is only a rule of evidence and does not create a substantive offence. It means that if two or more persons intentionally do a thing jointly, it is just the same as if each of them has done it individually.

Constructive liability under the Code may arise in three cases. A person may be constructively liable for an offence which he did not actually commit by reason of

(a) the common intention of all to commit such an offence (Section 34)

(b) his being a member of a conspiracy to commit such an offence (Section 121-A)

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(c) his being a member of an unlawful assembly, the members whereof
knew that an offence was likely to be committed. (Section 141).

Object:- The section is intended to meet a case in which it may be difficult to
distinguish between the acts of individual members of a party who act in
furtherance of the common intention of all or to prove exactly what party was
taken by each of them. The principle which the section embodies is
participation in the same action with the common intention of committing a
crime; once such participation is established, Section 34 is at once attracted.4

Principle:- The section embodies the principle that if two or more persons
intend to do a thing jointly it is just the same as if each of them had done it
individually.5 The section has no application to cases where there is only
principal offender and the others are associated with him as accessories or
abettors, as in such cases the criminal act can not be said to be done by several
persons. The section applies only where more persons than one are associated
together in one crime as principals. The criminal act must be done by several
persons alleged to have taken part in it “in furtherance” of the common
intention of all of them. The meaning of the section is that if two or more
persons had individually done a thing jointly, the position is just the same if
each of them had done it individually.6

Every one must be taken of have ‘intended the probable and only
results of the combination of acts in which he is joining.7 Thus element of
participation in action is the leading feature of Section 34.8 However, this

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5 Waryam Singh v. Crown (1941) 22 Lah 423; B.N. Srikantiah v. State Mysore (1958) Cr
Mad 460 (461); M.K. Parmeshwara v. N.K.Pillai, AIR 1966 Ker 264 (265): C.
7 Nga Po Sein : (1902) 1 LBR 233; Sultan v. Emperor (1930)12 Lah 442.
SCR 319; See also Shiv Prasad Chuni Lal Jain v. State of Maharashtra AIR 1965 SC
264.
participation need not in all cases be by physical presence. Especially where offence consists of diverse acts which maybe done at different times and places.

In furtherance of the common intention of all:- The applicability of this section depends on a criminal act having been done “in furtherance of the common intention of all.” These words have been 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.

The word “act” in Section 34 denotes as well a series of acts as a single act and such criminal act refers to the totality of a series of acts reflecting the unity of the criminal behaviour which resulted in the offence for which each individual is to be punished.

Common intention necessarily implies a pre-arranged plan. The plan need not be elaborate, nor is a long interval of time required. It could arise and be formed suddenly, as for example, when one man calls on bystanders to help him kill a given individual and they, either by their words or their acts, indicate their assent to him, and join him in the assault. There must be a pre-arranged plan however hastily formed and cruelty conceived. But pre-arrangement there must be and premeditated concert. It is not enough to have the same intention independently of each other, e.g., the intention to rescue another, and, if necessary to kill those who oppose. Accordingly, there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill and each can individually inflict a separate fatal blow and yet none would have

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the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan.\textsuperscript{12}

\textbf{Same or similar intention:-} The distinction between a common intention and similar intention will be very fine but is nonetheless a real and substantial one. In the case of Section 34 it is well established that a common intention presupposes prior concert. It requires a pre-arranged plan because before a man can be vicariously convicted for the criminal act of another, the act must have been done in furtherance of the common intention of them all. Accordingly there must have been a prior meeting of minds. Several persons can simultaneously attack a man and each can have the same intention, namely the intention to kill, and each can individually inflict a separate fatal blow and yet none would have the common intention required by the section because there was no prior meeting of minds to form a pre-arranged plan. In a case like that, each would be individually liable for whatever injury he caused but none could be vicariously convicted for the act of any of the others; and if the prosecution cannot prove that his separate blow was a fatal one he cannot be convicted of the murder however clearly an intention to kill could be proved in his case. The partition which divides their bounds is often very thin; nevertheless, the distinction is real and substantial and if overlooked will result in miscarriage of justice.\textsuperscript{13}

\textbf{Sections 34 and 35 :} The provisions of Section 34 and 35 are complementary in as much as the principles embodied in Section 35 supplement the principle embodied in Section 34.\textsuperscript{14}

\textbf{Sections 34 and 37 :} "The distinction between Sections 34 and 37 is that while the former requires a common intention for a criminal act done by

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{12} Ibid.\textsuperscript{12}
\item \textsuperscript{13} \textit{Pandurang v. State of Hyderabad}, AIR 1955 SC 216.\textsuperscript{13}
\item \textsuperscript{14} \textit{Ghurey v. Rex} AIR 1949 All 342 at 345 : 1949 A LJ 87.\textsuperscript{14}
\end{itemize}
\end{footnotesize}
several persons (i.e. "a unity of criminal behaviour which results in a criminal offence") in which case each actor becomes liable as if that act were done by him alone, Section 37 deals with intentional co-operation (which, it was pointed out by Lord Summer in Barendra Kumar Ghose v. Emperor, may not be the same as a common intention) in an offence committed by means of several acts, and punishes such co-operation (provided it consist in doing any one of those acts either singly or jointly with any other person) as if it constituted the offence itself. Now if, as Lord Sumner says, intentional co-operation may not be the same as a common intention, it must, in my opinion, include action which contributes to the offence and is done with the consciousness that the offence is not foot, though without sharing intention to commit that offence."

Sections 34 and 38 :- In the under noted case, three accused assaulted the victim. Out of them two used their weapons and the manner in which they gave blows clearly showed their intention to kill the victim. The third accused did not use his *lathi* for causing injuries to the victim. It was held on the facts and circumstances of the case that the liability of the two accused for the murder of the deceased was established with the aid of Section 34. Regarding the third accused it was held that applying the principles of Section 38, he could be held guilty only under Section 304 Part II as he had intentionally joined in the commission of the act with the knowledge that the assault on the victim was likely to result in his death and that he never had the intention to commit murder.

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15 AIR 1925 PC 1 : ILR 52 Cal. 197.
Recent leading cases (years 2008) Sewa Ram & Anr v. State of U.P. Held.\(^\text{18}\).

Section 34 has been enacted on the principle of joint liability in the doing of a criminal act. The section is only a rule of evidence and does not create a substantive offence. The distinctive feature of the section is the element of participation in action. The liability of one person for an offence committed by another in the course of criminal act perpetrated by several persons arises under Section 34 if such criminal act is done in furtherance of a common intention of the persons who join in committing the crime. Direct proof of common intention is seldom available and, therefore, such intention can only be inferred from the circumstances appearing from the proved facts of the case and the proved circumstances. In order to bring home the charge of common intention, the prosecution has to establish by evidence, whether direct or circumstantial, that there was plan or meeting of minds of all the accused persons to commit the offence for which they are charged with the aid of section 34, be it pre-arranged or on the spur of the moment; but it must necessarily be before the commission of the crime. The true concept of the section is that if two or more persons intentionally do an act jointly, the position in law is just the same as if each of them has done it individually by himself. As observed in Ashok Kumar v. State of Punjab,\(^\text{19}\) the existence of a common intention amongst the participants in a crime is the essential element for application of this section. It is not necessary that the acts of the several persons charged with commission of an offence jointly must be the same or identically similar. The acts may be different in character, but must have been actuated by one and the same common intention in order to attract the provision.

\(^{18}\) AIR 2008 SC 682.

\(^{19}\) AIR 1977 SC 109.
In *Hardeep Singh & Ors. v. State of Haryana* \(^{20}\) *Held*—

Section 34 does not say "the common intention of all", nor does it say "and intention common to all". Under the provisions of Section 34 the essence of the liability is to be found in the existence of 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 under Section 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. 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.

(ii) *Abettor present when offence is committed (Section 114)*

Under Section 114 of IPC a principle of joint liability is seen where the abettor becomes present at the seem of occurrence that is why he is held liable jointly with the actual wrong doer Section 114 says—

Whenever any person who, if absent would be liable to be punished as an abettor, is present when the actor offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence (Section-114).

Sections 34 and 114 Distinguished. It maybe of interest to make out the distinction between Sections 34 and 114 of the Penal Code. The distinction is very fine but nonetheless it is there. It is obvious that both Sections 34 and 114

\(^{20}\) AIR 2008 SC 3113.
contemplate cases where an offence has been committed. Section 34 applies where a criminal act is done by several persons in furtherance of common intention of all and makes all of them equally liable, although only one of them may have committed the actual crime; while Section 114 refers to the case where a person either by instigating or by aiding or conspiring previous to the commission of the act renders himself liable as an abettor by being present only when the act is committed, although he may have taken no active part in the doing of it.\textsuperscript{21} Cases under Section 114 fall under Section 107 and have the additional element of presence at the commission of the crime, while cases falling under Section 34 are distinct from cases of abetment and will apply to all offences described under the Penal Code. Huda observes:\textsuperscript{22} "From the general accuracy of the Indian Penal Code and the care taken in defining offence to keep in view all their distinct phases, we may presume that Sections 34 and 114 were not intended to overlap." Section 114 may be said to be somewhat wider in one respect than Section 34 which defines joint liability. For instance, an instigator working through an innocent agent would not be liable under Section 34, while he would be liable under Section 114. Section 34 deals with the case of conspiracy which is only a form of abetment dealt with under Section 114.

**Cases :-** Now let us study a few case wherein the distinction between Sections 34 and 114 has been brought out. In the case of *Manindra Chandra Ghosh v. K.E.*\textsuperscript{23} where a servant had received money for *ganja* sold by his master in contravention of the terms of his licence, it was held that Section 114 did not apply and that the servant was guilty of the offence of selling *ganja*.

\textsuperscript{21} Jan Mohd. (1864) 1 W.R. (Cr.) 49; Nfa Po Kyone (1933) 11 Rang. 354.
\textsuperscript{22} Huda, p. 133.
\textsuperscript{23} 18 C.W.N. 580; 41 Cal. 752.
without a licence by the operation of section 34. In another case,\textsuperscript{24} the accused was found to have been a member of an unlawful assembly which went armed with \textit{lathis} and axes and looted the house of the complainant. The accused himself did not remove any property nor did he make any preparation for committing any theft nor aiding any one in the commission of the theft, yet he was held liable by the trial court under Sections 114 and 379 of the Indian Penal Code. On appeal, the Calcutta High Court held that on these facts the accused, if he had been absent, would not have been punishable as an abettor. His connection with the offence of theft arose from being a member of the unlawful assembly, the common object of which was to commit theft. That being his only connection with the case, it was held that Section 114 did not apply. Huda\textsuperscript{25} criticizes this decision and observes:

\begin{quote}
I do not think the view of law taken in this case is correct. There may be circumstances under which mere presence may amount to abetment. The accused, it was found, shared the common intention of his party and was their leader. He was with them. His presence along, whilst he approved what was going on, was sufficient to constitute him an abettor.
\end{quote}

Section 114 introduces a statutory fiction whereby an abettor is treated as if he had actually committed the offence himself, by reason of his presence at the time and place of the offence.

To sum up, we may state that a person may be guilty of abetment even if he is not present at the scene of the offence and even if the offence is not committed. If the offence is committed and he is present when the act is committed, Section 114 applies, namely, that he shall be deemed to have committed the offence. Although the criminal liability under both Sections 34

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\textsuperscript{24} \textit{Hansa Pathak v. Banshi Lal Dass}, 8 C.W.N. 519. \\
\textsuperscript{25} Huda, p. 142.
\end{flushright}
and 114 is similar, the basis for criminal liability is not exactly identical. There need not be any abetment in the case under Section 34, as also in the case under Section 114 there need not be any common intention. The whole object of Sections 34 and 114 is to provide for cases in which the exact share of one of the several criminals cannot be ascertained, though the moral culpability of each is clear and identical. Neither of these sections should be interpreted to defeat the very object which underlines them.\(^{26}\) There may be cases in which a person convicted under Section 302 read with Section 114 might as well have been convicted under Section 302 read with Section 34.\(^{27}\)

(iii) Acts done under common object (Section 149)

When five or more persons in prosecution of common object common an illegal act each and every one is equally liable irrespective of their prior meeting of mind (i.e. common intention). But consent of all plays role in joining the common object because everyone has consented to achieve the common object Section 149 of IPC reads as—

Every member of unlawful assembly guilty of offence committed in prosecution of 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.

Basis:— Under Section 149, the liability of other members for the offence committed during the continuance of the occurrence rests upon the fact whether the other members knew beforehand that the offence actually


\(^{27}\) Mukund, 61 Cal. 10.
committed was likely to be committed in prosecution of the common object. Such knowledge may reasonably be collected from the nature of the assembly, arms of behaviour, at or before the scene of action. If such knowledge may not reasonably be attributed to the other members of the assembly then their liability for the offence committed during the occurrence does not arise.

**Facts:** Section 149 has two facets. Every member of an unlawful assembly is by that action rendered liable for the offence committed by any member of the assembly in prosecution of its common object. That fixes vicarious liability of the members of an unlawful assembly. But such liability is not limited to the acts done in prosecution of the common object of the assembly. It extends even to acts which the members of the assembly “knew to be likely to be committed in prosecution of that object.”

The first part of the section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common object of the assembly, it may yet fall under Section 149, if it can be held that the offence was such as the members knew was likely to be committed and his is what is required in the second part of the section. The distinction between the two parts of Section 149 cannot be ignored or obliterated. In every case it would be an issue to be determined.

**Scope of the section:** This section is divided into two parts: (1) an offence committed by a member of an unlawful assembly in prosecution of the

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(1975)3 SCC 314.
30 Ram Dular Rai AIR 2004 SC 1043.
common object of that assembly; and (2) an offence which the members of that assembly knew to be likely to be committed in prosecution of the common object.

**Offence Committed by member of the unlawful assembly** :- The Supreme Court in *Yunis v. State of Madhya Pradesh*, held that presence of accused as part of unlawful assembly is sufficient for conviction. The fact that accused was a member of unlawful assembly and his presence at place of occurrence has not been disputed is sufficient to hold him guilty even if no overt act is imputed to him.

‘In Prosecution of the Common Object of that assembly’

It needs to be emphasized that the basis of liability under Section 149, IPC is constructive and not individual. Once the membership of an unlawful assembly is proved and it is established that the act was committed in prosecution of the common object of the unlawful assembly or was such which the members knew was likely to be committed, all the members would be equally liable for it, irrespective of the gravity of their individual roles even though those who do not take part in the actual assault on the victim would be equally liable.32

Where the evidence showing the two accused were members of unlawful assembly and armed with deadly weapons; came along with other accused and participated in murderous assault on both the victims, the finding that he had not caused any serious injuries to the two victims and no specific role was attributed to these two accused and acquitting these accused is illegal as the scope of Section 149, IPC, is wide enough to hold these two accused guilty with the aid of Section 149, IPC, for substantive offences punishable under Section 302, IPC.33

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31 2003 Cr. LJ 817 (SC).
32 *Janardhan Raghu Mhatre & Ors v. State of Maharashtra* 1996 Cr. LJ 4180 (Bom) (DB).
Where accused persons formed an unlawful assembly and equipped with weapons came to the place of incident, they all have actively participated in the incident which has resulted in default of the accused, this clearly indicates the state of mind of the accused persons, which reflects forming of an unlawful assembly and acting in furtherance of a common object. It would, therefore, not be necessary for the prosecution to establish as to who caused the fatal injury to the accused. It stands, therefore, established that they had approached the place of incident in furtherance of their common object and to fulfill that common object, they unitedly assaulted the deceased and caused injuries to them, which ultimately resulted in his death.\(^34\)

No doubt, the philosophy behind Section 149 of the IPC is to fasten a person with vicarious liability for the offence committed by another person. Even then it is essential that the offence should have been committed in prosecution of the common object of the unlawful assembly. One can be nailed to conviction with the help of Section 149 only if he was a member of the unlawful assembly. He could be tagged with membership of the assembly when the common object of the assembly was to commit the offence which any one among them has committed.

"In prosecution of the common object" do not means "during the prosecution of the common object of the assembly". The words "in prosecution of the common object" show that the offence committed was immediately connected with the common object of the unlawful assembly, of which the accused were members. The act must be such as have been done with a view to accomplish the common object attributed to the members of the unlawful assembly. The words "in prosecution of the common object" have to be strictly construed as equivalent to "in order to attain common object."\(^35\)

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\(^34\) *Singha Magcin Gamit v. State of Gujarat* 1999 Cr LJ 2111 (Guj) (DB).
\(^35\) Jit Singh, (1959) Punj. 50.
In order to bring a case within this section it must be proved that the act was done with a view to accomplish the common object of the unlawful assembly or the act though not one done in prosecution of the common object of the unlawful assembly was one which the accused knew would be likely to be committed in prosecution of the common object. This section is never intended to punish a member of an unlawful assembly for any offence committed by any member of it. What is required to punish any member for offence committed by any other member of the assembly is that it must have been committed in prosecution of the common object of the assembly and that the person sought to be punished must have been a member of the assembly at the time of commission of that offence. Accordingly, it must be proved in each case that the person concerned was not only a member of the unlawful assembly at some stage, but shared the common object of the assembly at all the crucial stages. The sharing of common object would, however, not necessarily require the member present and sharing the object to engage himself in doing an overt act.

In *Amjad Ali v. State of Assam*, on 3-8-1989 at about 4 p.m when three persons namely, Tara Mia, Saket Ali and Owaz Khan were fishing in the Dhameswari Beel, the accused 26 in number armed with sticks, spears and other deadly weapons attacked those persons inflicting serious injuries resulting in their death and thereafter dragged the dead bodies and threw them in the river. At the time of occurrence, hue and cry was also said to have been raised attacking crowd, which included Manowara Begum and Hussain Mia. The accused attacked even these two and caused injuries on their person. In the FIR twenty-four persons were named and the others were not named. One

39 2003 Cri. L.J. 3545 (S.C.)
of them died during pendency of trial. In all eleven witnesses were examined by the prosecution. There were faction ridden groups over exercise of right to fish. The eye witnesses were from around that place of occurrence. Dead bodies of two deceased were recovered after 2/3 days and that of the third one was not recovered.

It was held that it is incorrect to claim that prior formation of an unlawful assembly with a common object is a must and should have been found as a condition precedent before roping the accused within the fold of Section 149 Indian Penal Code. No doubt the offence committed must be shown to be immediately connected with the common object, but whether they have the common object to cause the murder in a given case would depend and can rightly be decided on the basis of any proved rivalry between two factions, the nature of weapons used, the manner of attack as well as all surrounding circumstances. Common object has always been considered to be different from common intention and that it does not require prior concert and common meeting of minds before the attack. Common object could develop eo instanti and being a question of fact it can always be inferred and deduced from the facts and circumstances projected and proved in a given case.

In the present case the assailants formed an unlawful assembly and their common object was to kill the three deceased because of dispute relating to fishing. In any case, the common object must have developed eo instanti, i.e., on the spot.\textsuperscript{40}

Members knew to be likely :- The second part relates to a situation where the members of the assembly knew that the offence is likely to be committed in prosecution of the common object. A thing is likely to happen only when it

\textsuperscript{40} Amjad Ali v. State of Assam, 2003 Cri. LJ 3545 (SC).
will probably happen or may very well happen. The word 'knew' indicates a state of mind at the time of commission of an offence and not later. Knowledge must be proved. The word "likely" means some clear evidence that the unlawful assembly had such a knowledge. The prosecution must prove that the accused not only knew that the offence was likely to be committed but also that it was likely to be committed in prosecution of the common object of the assembly.

In *K.C. Mathew*, people gathered at dead of night armed with crackers, choppers and sticks to rescue persons who were guarded by armed police. It was held that they must have known that murder will be committed and a conviction for murder-cum-rioting was justified.

It was held in *Gangadhar Behera v. State of Orissa*, that the expression 'in prosecution of common object' as appearing in Section 149 has to be strictly construed as equivalent to ‘in order to attain the common object.’ It must be immediately connected with the common object by virtue of nature of the object. There must be community of object and the object may exist only upto a particular stage and not thereafter.

It was further held that Section 149, Indian Penal Code consists of two parts. The first part of section means that the offence to be committed in prosecution of the common object must be one which is committed with a view to accomplish the common object. In order that the offence may fall within the first part, the offence must be connected immediately with the common object of the unlawful assembly of which the accused was a member. Even if the offence committed is not in direct prosecution of the common

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41 Ram Anjore, AIR 1975 SC 185.
42 Sindu Gope, AIR 1946 Pat. 84.
43 Hardeo Singh, AIR 1920 Pat. 795.
44 Maiyadin, 1973 Cri. L.J. 1203.
45 AIR 1956 SC 241.
46 2003 Cri. L.J. 41 (S.C.)
object of the assembly, it may yet fall under Section 141 if it can be held that
the offence was such as members knew was likely to be committed.

It was also made clear that though no hard and fast rule can be laid
down under the circumstances from which the common object can be called
out, it may reasonably be collected from the nature of assembly, arms it carries
and behaviour at or before or after the scene of incident. The word ‘knew’
used in the second branch of the section implies something more than a
possibility and it cannot be made to bear the sense of ‘might have been
known’, positive knowledge is necessary.

Object maybe common, Intentions may Differ – Sometimes both may
overlap

Common intention required by Section 34 and the common object
required by Section 149 are far from being the same thing. There is a
difference between object and intention, for, though the object of the assembly
be common, the intentions of the several members may differ and indeed may
be similar only in respect that they are all unlawful. The object of an
assembly as a whole may not be the same as the intention which several
persons may have when in pursuance of that intention they perform a criminal
act and it may well be that the object of the assembly is lawful, whereas the
intention common to those of the assembly who jointly commit a criminal act
is in itself criminal and the joint criminal act is equally imputed to all of
them. It is true that ‘common object’ and ‘common intention’ sometimes
overlap, but they are used in different senses in law and should be kept
distinct. In a case of unlawful assembly or riot we are concerned with a
common object. A common object is different from a common intention in

48 Barendra Kumar Ghose v. King-Emperor AIR 1925 PC 1, 7.
49 Bhondu Das v. Emperor AIR 1929 Pat 11, 12, 30 Cr LJ 205.
that it does not require prior concert and a common meeting of minds before the attack, and an unlawful object can develop after the people get there. Under Section 141 it is enough that each has the same object in view, that their number is five or more and that they act as an assembly to achieve that object.50

It may be noted that for the application of Section 34, which deals with common intention, that intention must be to do a criminal act, whereas the common object which falls under this section need not necessarily be to do a criminal act. For instance, the common object maybe to recover possession of property from a trespasser. That by itself is not unlawful. It becomes unlawful only if the object is to obtain possession ‘by means of criminal force or show of criminal force’. Where, however, the common object of an assembly is ‘to commit any mischief or criminal trespass or any other offence’ (Section 141, third) there may not be much distinction between common object’ and common intention’.51

Prior concert not Necessary

In order to constitute an unlawful assembly, it is not necessary that there should be a pre-concert in the sense of a meeting of the members of the unlawful assembly as to the common object; it is enough if it is adopted by all the members and is shared by all of them.52

Sections 149 and 34 Distinguished

(a) Common intention and common object:- Common intention is different from common object.53 There is a clear distinction between the provisions of Sections 34 and 149, IPC and the two provisions are not to be confused. The principal element in Section 34 is the common intention to commit a crime. In

furtherance of the common intention. Several acts may be done by several persons resulting in the commission of that crime. In such a situation s 34 provides that each one of them would be liable for the crime in the same manner as if all the acts resulting in that crime had been done by him alone. There is no question of common intention is Section 149. An offence may be committed by a member of an unlawful assembly and the other members will be liable for that offence although there was no common intention between that person and other members of the unlawful assembly to commit that offence provided the conditions laid down in the section are fulfilled. Thus, if the offence committed by that person is in prosecution of the common object of the unlawful assembly or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every member of the unlawful assembly would be guilty of that offence, although there may have been no common intention and no participation by the other members in the actual commission of that offence. But in the total absence of evidence both in respect of offence under Section 34 as well as Section 149, the conviction of accused persons with the aid of Section 149 or Section 34 is not proper.

(iv) Dacoity with murder (Section 396)

Because atleast five persons are required for constituting an offence of dacoity therefore principle of joint liability takes place on the basis that each and everyone has consented to commit dacoity with sweet will, without any compulsion Section 396 Of IPC runs as under–

If any one of the five or more persons who are conjointly committing dacoity, commits murder in so committing dacoity everyone of those persons shall be punished with death, or imprisonment of life or rigorous imprisonment

for a term which may extend to ten years, and shall also be liable to fine. Section 396 provides constructive liability of the other members of the gang of dacoits for the offence committed, by a member of the gang. This section is enacted to declare the liability of one dacoit to be co-extensive with the other. The only condition required for this purpose is that they should at that time have been "conjointly committing" the dacoit. It is not necessary that the murder should be committed in the presence of all. When in the commission of a dacoity a murder is committed, it matters not whether the particular dacoit was inside the house where dacoity was committed or outside the house, so long as the murder was committed in the commission of that dacoity.

The word "conjointly" used in the section is the most important word bearing on the liability of persons accused of an offence of dacoity. Although the term "common intention" is not used, the word "conjointly" undoubtedly refers to united or concerted action of the person participating in the transaction. If individual acts of persons cannot reasonably be referred to a united or concerted action of such person, there cannot be any question of any conviction for dacoity of the group of persons concerned. Thus in *Ibrahim v. K.E.* where the accused did not actually take part in the dacoity but was with others before the dacoity and went with one of the dacoits to borrow a boat and during the dacoity was left in the boat at a place some five or six miles from the place of the dacoity and was told to wait for other dacoits, it was held that the acts of the accused did not come within the definition of the dacoity as he was not present though he might be aiding such commission or attempt. However, in *Sita Ram v. K.E.* it was held that a dacoity begins as soon as there is an attempt to commit robbery and a shot fired thereafter in order to

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56 AIR 1954 SC 204.
57 (1925) 42 C.L.J. 496.
58 (1925) 26 Cr. L.J. 1364.
keep off a rescue party and to allow the theft to be committed is an act committed in the committing of the dacoity within the meaning of Section 396. In order to make a dacoit responsible for the murder committed by another dacoit, it is necessary that such a murder should have been committed in committing the dacoity or in carrying away the property after the dacoity has been committed. Thus where the murder was committed by one of the gang of dacoits, who were beating a retreat without getting any plunder, and while they were so attempting to escape, one of them turned round and killed one of the pursuers. It was held that responsibility of such a murder was confined to the actual murderer and could not be extended to the whole gang.59 It may, however, be said that there can be no doubt that the extreme penalty of law is reserved for actual murderers and those contributing to it by their acts and that the lesser penalty would be more befitting those who are only constructively held liable under this section. And there maybe even a case for special mitigation if a dacoit though otherwise joining the plunder actively opposed the perpetration of the murder, in which case, though he could not escape liability, his case would be one where there is room for the exercise of discretion in awarding the punishment.

(v) All persons jointly concerned in lurking house trespass etc (Section 460)

Under Section 460 of IPC there is an offence indicating the application of joint or group liability according to which because all persons have consented to commit the offence with sweet will, without compulsion therefore each and every one is responsible for joint criminal liability. Section 460 reads as—

59 Chander (1906) Cr. L.J. 294.
If, at the time of the committing of lurking house trespass by night or house-breaking by night, any person is guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Now we shall study another instance of constructive liability, which is afforded to us under Section 460 of the Penal Code, which punishes all persons jointly concerned in voluntarily causing or attempting to cause death or grievous hurt to any person at the time of committing lurking house-trespass or house-breaking by night for the collateral offences of grievous hurt or homicide committed by a confederate. Such a liability arises out of the highly illegal character of the adventure, in which the commission of such offences is not unnatural. It may be remembered that those who sow such wind must be prepared to reap the whirlwind of constructive liability for an act done by others. This section also provides necessary safeguards against improper extension of the criminal liability. It provides that in order to make a person liable for the act of another joint participant, (1) the latter must be himself guilty of lurking house trespass by night or house-breaking by night, (2) the injury in question must have been caused by him at the time of committing such offence, and (3) the person to be held liable must be jointly concerned in committing the offence of lurking house trespass by night or house-breaking by night.

The phrase “jointly concerned” is wide enough to include not only all such persons as actually take part in the commission of the offence as
principals, but also those who are aiders and abettors or commit an attempt to commit this offence. But such persons maybe either present or absent at the time of the commission of the act. Then the question arises: should this section apply equally to both such persons? Obviously the answer is in the negative, but as under the section only those persons are covered by the section, who are "jointly concerned in committing such lurking house trespass" which would evidently exclude acts of the aiders or abettors who are not present at the scene of occurrence.

II. Consent by Accessaries before and after the crime

When a wrongdoer has been abetted (by conspiracy) by someone that situation indicates that one person offered a *mens rea* which has been accepted or consented by other person therefore the abettor and wrongdoer have played the role in a crime. Same is the case in making conspiracy where after discussion over an issue two or more persons give their cross-consent for commission of a crime. Similar case is in harbouring offender where a harbourer gives consent to take the risk of harbouring the offender. There are numerous offences where Accessaries before and after the crime are defined. Under Accessaries before the crime only such offences are covered which are called inchoate (preliminary) crimes. Now we will study these offences chronologically in order of sections –

(i) Abetment by Conspiracy (Section 107) (unlawful combination)

Under second clause of Section 107 of IPC there is abetment by conspiracy where two or more persons conspire to commit an offence. If designed act is committed by one or more conspirators the remaining conspirators are also held liable because they were also party in the *mens-rea* that is why the criminal liability is fixed of all in a crime. The punishment may vary because the punishment is to be provided as per role of each culprit.
Abetment by Conspiracy

In order to constitute abetment by conspiracy, three things are essential:
(a) the person abetting must engage, with one or more other person or persons in a conspiracy; (b) The conspiracy must be for doing the thing abetted; and (c) and act or illegal omission must take place in pursuance of the conspiracy and in order to do the doing of that thing. Under the second clause of the section it will be observed that, when the abetment is by conspiracy, the elements which constitute the offence are, first, the combining together of two or more persons in the conspiracy, and secondly, an act or illegal omission takes place in pursuance of that conspiracy, and in order to do the doing of that thing. All these elements must combine to constitute abetment by conspiracy. Though, to establish the charge of conspiracy there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other’s presence: the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design.

So far as proof goes, conspiracy, as Grose J said in R. v. Brissae, ‘is generally matter of inference deduced from certain criminal acts of the parties accused, done in pursuance of an apparent criminal purpose in common between them.’

Under Explanation 5 to Section 108, it is not necessary for the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed.

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61 King-Emperor v. Tirunal Reddi 24 ILR Mad 523, 546.
62 Barindra Kumar Ghose v. R. 37 ILR Cal. 467.
63 (1803) 4 East 164, 171.
64 Queen v. Gobind Dobey 21 WR 35, 36; Re P. Rama Naidu AIR. 1942 Mad. 92(1).
Joint Liability

Each conspirator is the Agent of the Other:—Where several persons are proved to have combined together for the same illegal purpose, any act done by one of the parties in pursuance of the original concerted plan, and with reference to the common object, is, in the contemplation of the law, the act of all. Each party is an agent of the others in carrying out the objects of the conspiracy, and doing anything in furtherance of the common design.\(^65\)

Where four persons combine to attack with lathis their common enemy, each is abetting the conduct of the other within the meaning of this section.\(^66\)

It is not essential that there should have been an agreement in express terms as to what the principal in the first degree should do; the aider and abettor will be responsible for anything done in the joint enterprise which the evidence shows was within his contemplation. Thus, in cases where several persons have come together for the purpose of committing some breach of the peace, their general resolution must be considered, and if it appears upon evidence either to have been actually and explicitly entered into by the confederates, or may be reasonably collected from their number, equipment or behaviour at or before the scene of action, that some kind of violence shall in certain eventualities be resorted to, then every individual in the group will be involved in the guilt of an who do any such act which has thus been established to have been within the contemplation of the group.\(^67\)

Abetment by Conspiracy Distinguished from Conspiracy

Conspiracy may have an Element of Abetment but it is Something more than Abetment:—A conspiracy will not amount to an abetment unless an act or illegal omission takes place in pursuance of the conspiracy. Hence, if the

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\(^65\) Queen v. Ameer Khan 17 WR 15, 16.
\(^66\) Jaimangal v. Emperor AIR 1936 All 437, 439, 37 Cr LJ 864.
offence, alleged to be the object of the conspiracy, has been committed, the conspiracy amounts to an abetment under Section 107 and, in such a case, it is unnecessary to invoke the provisions of Sections 120A and 120B.68 There may be an element of abetment in a conspiracy, but conspiracy is something more than an abetment.69 In order to constitute the offence of abetment by conspiracy, firstly, there must be a combining of two or more persons in the conspiracy; secondly, an act or illegal omission must take place in pursuance of that conspiracy and in order to do that thing. It is not necessary that the abettor should concert the offence with the person who commits it. It is sufficient if he engages in the conspiracy in pursuance of which the offence is committed. But the gist of the offence of criminal conspiracy is in the agreement to do an illegal act or an act, which is not illegal, by illegal means. When the agreement is to commit an offence, the agreement itself becomes the offence of criminal conspiracy. Where however, the agreement is to do an act, which is not illegal, by illegal means, some act besides the agreement, is necessary. Therefore the distinction between abetment by conspiracy and criminal conspiracy, so far as the agreement to commit an offence is concerned, lies in this that for abetment by conspiracy, mere agreement is not enough while in the offence of criminal conspiracy, the very agreement or plot is in itself, an act and is the gist of the offence. It is substantive offence in itself70 and has nothing to do with abetment.71

Consent vis a vis Conspiracy

Gist of the offence lies in Forming the Scheme or design :– 'A conspiracy', it has been said, 'consists not merely in the intention of two or more, but in the

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68 Jugeshwar Singh v. Emperor AIR 1926 Pat. 346, 343, 37 Cr LJ 893.
71 Chondiram v. Emperor AIR 1926 Sind 17, 27 Cr. LJ 286.
agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only, it is not indictable'. The gist of the offence lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. The external or overt act of the crime is concert by which mutual consent to a common purpose is exchanged. The agreement or engagement postulates knowledge of the scheme or design. It is not necessary that all the conspirators should be equally informed of all the details of the scheme. But there must be mutual consent to a common purpose.

One D impersonated G and withdrew from a treasury money payable to G. The commission of the offence of cheating by impersonation by D was facilitated by R, a mukhtar, identifying him as G. It was held that R could not be convicted for abetment of the offence committed by D unless it could be found that R knew that the person whom he identified was not G and the offence of cheating by impersonation was being committed.

Leading case on Abetment by Conspiracy
Abettor’s conviction is valid even though principal offender might be acquitted because of lack of evidence—Supreme Court, Gallu Sab v. State of Bihar.

Facts:—A was charged under s 436, IPC for setting fire to a hut, and B under s 436 read with Section 109, IPC for instigating A to set fire to the hut. A was acquitted because of infirmity in the evidence against him, but B’s conviction was upheld by the high court.

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72 Mulchahy v. Queen (1868) LL 3 HL 306, 317.
74 Radhe Kishun v. Emperor AIR 1929 Pat. 157, 159, 30 Cr. LJ 642.
75 AIR 1958 SC 813.
It was held that it is not necessary in every case that the principal offender must be convicted of the offence charged before the abettor can be convicted of the abetment of that offence. The conviction of B, under Section 436 read with Section 109, IPC on whose instigation the hut was set on fire was not bad merely because he evidence had not been considered sufficient for conviction of A.

(ii) Criminal Conspiracy (unlawful combination) Section 120A :- Under Section 120 A of IPC criminal conspiracy has been defined. It is such kind of inchoate (preliminary) crime that two or more persons are punished only at the INTENTION stage of a crime. It has long history of journey from England. An illegal designed is punished even. Cross-consent by two or more persons is called here agreement. The stage of agreement takes only when all parties have consented thereto commit an illegal act agreed upon leaving no reservation

Section 120A of IPC reads as--

Definition of criminal conspiracy (Section 120A) :- When two or more persons agreed to do, or cause to be done--

(1) an illegal act, or

(2) an act, which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement exception an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.— It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Mental element (consent) in criminal conspiracy

Previous acquaintance between the conspirators is unnecessary, nor is it necessary that each conspirator should have seen the others or have
knowledge, as to who all the members of the conspiracy are. It is not essential that the parties meet or that they confer and formulate their plans, nor that each conspirator have knowledge of the scope of the conspiracy or the means by which the purpose is to be accomplished, nor that any time should have been set for the accomplishment of the design. Neither is it necessary, that the plan of a combination shall embrace in detail in its early stages the various means by which it is to be executed, as it is sufficient that there is a general plan to accomplish the result sought by such means as may from time to time be found expedient. Conspiracy implies concert of design and not participation in every detail of execution, and it is not necessary that each conspirator should have taken part in every act or know the exact part performed or to be performed by the others in the furtherance of the conspiracy. It has been stated in some cases that an act which is lawful when done by an individual does not become unlawful merely because it is done by two or more persons acting in concert; but the weight of authority seems to be to the effect that, while an act committed by an individual may not be unlawful, yet the same act, when committed by a combination of individuals, may be unlawful and criminal and may render the members of the combination liable to indictment for criminal conspiracy.

To render the formation a common design of a criminal conspiracy there must be a corrupt motive or intent, generally inferable whenever the means used are such as would ordinarily result in the commission of an unlawful act although it has been held that failure to prove a corrupt motive on the part of one of the conspirators, will not warrant the direction of a verdict of

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acquittal as to him.\textsuperscript{79} The fact that the motive of a party was not corrupt when he joined a conspiracy does not exculpate him if he remains a member thereof after learning of its illegality. To constitute the criminal intent necessary to establish a conspiracy to commit an act prohibited by statute, there must be both knowledge of the law and knowledge of its actual or intended violation. Guilty knowledge of the act done by the conspirators or of the facts, the existence of which is essential to consummate the conspiracy, is a necessary element of the offence,\textsuperscript{80} although it is not necessary to show that the guilty knowledge was imparted to all of them at one and the same time, and by only one and the same means it only being necessary to show that each of the conspirators had guilty knowledge, no matter how, when or where he acquired it. Act done innocently, although tending to further the object of a conspiracy, will not render their author a co-conspirator. Where an association, innocent in its inception, is formed, and the powers of such association are by those who have the control and management of it subsequently perverted to purposes of oppression, and injustice, only those will be liable who have participated in the perversion or who have assented thereto. So, also, persons who agree to do an act innocent in itself, in good faith, and without the use of criminal means, are not converted into conspirators because it turns out that the contemplated act was prohibited by statute.\textsuperscript{81}

Sections 34 and 120A – Distinction: There is not much substantial difference between conspiracy, as defined in Section 120-A and acting on a common intention, as contemplated in Section 34. While in the former, the gist of the offence is bare engagement and association to break the law even though the illegal act does not follow, the gist of the offence under Section 34,

\textsuperscript{79} Mulcahy, L.R. N.L. 306 at p. 326.

\textsuperscript{80} Jugeshwar Singh v. Emperor, AIR.

\textsuperscript{81} 1936 Pat. 346 at p. 348 : 87 Cr. L.J. 893 : 17 P L.T. 234.
is the commission of a criminal act in furtherance of a common intention of all
the offenders which means that there should be unity of criminal behaviour
resulting in something for which an individual would be punishable, as if it
were all done by himself alone. All the accused against whom the prosecution
alleges that there was unity of criminal behaviour actuated by a common
intention to extort a confession can, therefore, be jointly tried under Section
223 Cr. P.C., 1973. The evidence as to conspiracy under Section 120-B having
been rejected, the same evidence could not be used for finding a common
intention proved under Section 34.82 When the only evidence against the
accused of his being a member of the conspiracy consists of the commission of
the offences themselves by others it cannot be said that he was in the
conspiracy.83 Section 34 enunciates a principle of liability. It is not an offence
by itself. Section 120-A refers to an offence i.e., an agreement to commit an
offence.

Sections 34, 109 and 120B – Distinction :- Section 34 embodies the principle
of joint liability in the doing of a criminal act, the essence of that liability
being the existence of a common intention. Participation in the commission of
the offence in furtherance of the common intention of all invites its
application. Section 109, on the other hand, may be attracted even if the
abettor is not present when the offence abetted is committed provided that he
has instigated the commission of the offence or has engaged with one or more
other persons in a conspiracy to commit an offence and pursuant to that
conspiracy some act or illegal commission taken place or has intentionally
aided the commission of an offence by an act or illegal omission. Criminal
conspiracy differs from other offences in that mere agreement is made an
offence even if no step is taken to carry out that agreement. Though, there is

83 AIR 1972 SC 1502.
close association of conspiracy with incitement and abetment, the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 of the Code. A conspiracy from its very nature is hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters of from utter strangers. 84

Recent leading case by Supreme Court (2008) : - Yogesh & Sachin Joshi v. State of Maharashtra. 85 Thus, it manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events fro which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

(iii) Offences against the State (Sections 121A, 128, 130)

Section 121a of IPC states as under – 121A-Conspiracy to commit offences punishable by Section 121. Whoever within or without (India) conspires to commit any of the offences punishable by Section 121 or conspires to overawe, by means of criminal force or the show of criminal force, the Central Govt. or any State Govt. shall be punished with imprisonment of either description which may extend to ten years, and shall make place in pursuance thereof.

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84 2003 CrLJ 3041.
85 AIR 2008 SC 2491.
The section punishes two kinds of conspiracy. The first is a conspiracy to wage war against the Government of India, and the second is conspiracy to overawe by force the Central Government or State Government.

Under this section the agreement of two or more persons to wage war against the Government of India or any State Governments is sufficient to hold the accused liable. No act or illegal omission is necessary for such a conspiracy. However, to convict a person under Section 121A it must be proved that the accused (i) had entered into a conspiracy, and (ii) the conspiracy was to commit an offence punishable under Section 121, I.P.C., or to overawe by criminal force, or show of criminal force the Central or State Government. Conspiracy to overawe by means of criminal force, or show of criminal force, the Central or any State Government clearly embraces not merely a conspiracy to raise a general insurrection, but also a conspiracy to overawe the Central Government or any provincial Government by the organization of a serious riot and tumultuous unlawful assembly.

In *S.H. Jhabwala v. Emperor*, commonly known as the Meerut conspiracy case, the accused persons formed unions along the lines of soviet Russian Unions and had allegiance with Soviet Russia. The accused were charged and convicted by the Sessions Court under Section 121A, I.P.C. with conspiracy to wage war against the Government of India. Allowing the appeal and setting aside the conviction, their Lordships of Allahabad High Court, held that conspiracy to change the form of the Government of India, or of any State Government, even though it may amount to an offence under any other section of the Code, would not be an offence under Section 121A. I.P.C., unless it were conspiracy to overawe such Government by means of criminal force or show of criminal force.

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Now we will discuss the offences where the accused who is a prisoner puts an offer to a public servant or a harbourer to help him in either escaping or in rescuing or harbouring in consideration of any thing (i.e. any greed or out of love and affection) but whenever such public servant or a harbourer gives his consent to the accused, he also become liable for the act done. Now we will discuss Sections 128, 130 in detail.

**Public Servant voluntarily allowing prisoner of State or war to escape :-**

Whoever, being a public servant and having the custody of any State prisoner or prisoner of war; voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with [imprisonment for life], or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

**Principle :-** Sections 128, 129 and 130 deal with the rescue and escape of State prisoners. A public servant voluntarily allowing a State prisoner to escape is liable under Section 128, I.P.C., whereas if he negligently suffers such prisoners to escape he is accountable under Section 129, I.P.C. Section 130 relates to anyone aiding or rendering assistance in the escape of a State prisoner.

To bring action under this section, the accused must be a public servant; he must have custody of the prisoner; the prisoner must be a State prisoner, or a prisoner of war; and the public servant must voluntarily allow such prisoner to escape.

**State Prisoner:-** A State prisoner is one whose arrest and confinement is necessary in order to preserve the security and integrity of India from foreign hostility or from internal commotion. Such a person is confined by the orders
of the Government of India and may be detained in any fortress of jail.\textsuperscript{87} An Indian as well as a foreigner may be arrested under the provisions of these regulations and all such persons will be designated ‘State prisoner’.

\textbf{Prisoner of War}:- A prisoner of war is an enemy taken in arms and not others who being in arms submit and surrender themselves. According to international law, prisoners of war or others taken in custody after surrender are not to be slain, but treated as prisoners until the termination of hostilities.

This section prescribes punishment to the extent of life imprisonment or imprisonment of either description for a term which may extend to ten years, and fine in case public servant voluntarily allows a prisoner to escape from his custody.

(iv) Offences relating to forces (Section 134, 136)

Abetment of such assault, if the assault is committed (Section 134)

– This section punishes the abetment of an assault when such an assault in committed in consequence of that abetment

\textbf{Harbouring deserter (Section 136)}

This section punishes a person who harbourers a deserter of Army, Navy or Air Force. The word “Harbour” is defined in Section 52 of IPC. The essence of the offence is concealment of a deserter to prevent his apprehension. Wife harbouring her husband is an exception.

(v) Offences Against the Public Tranquility (Sections 154-158)

There are another batch of offences in which offence is committed with consent and common intention of all that is why all the persons of unlawful combination are punished on the principle of joint liability such offences are mentioned in Sections 154-158 which are discussed below.

\textsuperscript{87} Bengal Reg. III of 1818, Bombay Reg. XXV of 1817 and Madras Reg. II of 1819 substantially reproduced in Act 34 of 1850 and Act III of 1858.
Owner or occupier of land on which an unlawful assembly is held:-
Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held, or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principle officer at the nearest police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and, in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

Liability of owner of land for unlawful assembly :- Sections 154, 155 and 156 incorporate the principle of vicarious liability under criminal law. The owner or occupier of land on which a riot takes place, or a person for whose benefit it takes place, and also their agents or managers, if they fail to inform the police of such happening, or if they do not use all means at their command to suppress or avert rioting are held liable and punished. A master is held criminally liable under Sections 154 and 155, I.P.C. for acts committed by his agents or servants, whereas Sections 156 and 155, I.P.C. for acts committed by his agents or servants, whereas Section 156 fixes personal liability on the manager and agents.

Section 154 holds owners or occupiers of land, or persons having or claiming an interest in land, criminally liable for intentional failure of their servants or managers in giving information to the public authorities, or to take adequate measures to stop the occurrence of an unlawful assembly, or riot
upon the land of such persons. In other words, the section fixes criminal liability for the following breaches of duty, namely:

1. Omission to give notice to the public authorities about the unlawful assembly or riot;
2. Intentional failure to give information to the public authorities;
3. Abstention from taking adequate measures to suppress an unlawful assembly or riot.

The liability on the part of owners or occupiers of land has been fixed on the assumption that such persons by virtue of their position as landholders and landlords possess the power of controlling and regulating such type of gatherings upon their property, and to disperse, the object of such gatherings becomes illegal.

Punishment under Section 154, I.P.C. may extend up to one thousand rupees as fine.

Liability of person for whose benefit riot is committed:
Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land, respecting which such riot takes place or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place, and for suppressing and dispersing the same.

Liability of person for whose benefit riot is committed:
Section 155 is an aggravated form of the offence prescribed under Section 154, I.P.C. Section

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155 fixes vicarious liability on the owners or occupiers of land or persons claiming interest in land for the acts or omission of their managers or agents, if a riot takes place or an unlawful assembly is held in the interest of such class of persons. Punishment in such a case is left to the decision of the court which may award fine to any extent depending on the facts and circumstances of the case in question.

Liability of agent of owner or occupier for whose benefit riot is committed:- Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom,

the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Liability of agent for whose benefit riot is committed :- Section 156 imposes personal liability on the managers or agents of such owners or occupiers of property upon whose land a riot or an unlawful assembly is committed, if it is proved that no appropriate action was taken by such persons to prevent it. To constitute an offence under this section it must be proved that (i) a riot was committed, (ii) the riot was committed for the benefit of the accused, (iii) the accused had reason to believe that a riot was likely to be committed and (iv) that the accused did not take appropriate steps to prevent such riot.
Harbouring persons hired for an unlawful assembly:- Whoever harbours, receives or assembles, in any house or premises in his occupation or charge, or under his control any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons for unlawful assembly :- Section 157 makes harbouring, receiving or assembling of persons hired, engaged or employed to join as, or become members of an unlawful assembly, an offence. Thus to convict a person under this section the following ingredients must exist:-

(1) Persons must be hired;

(2) The accused must be aware of it; and

(3) The accused must harbour, receive or assemble, such persons to join or become members of an unlawful assembly.

A person found guilty under this section may be punished with up to six months of imprisonment, or with fine, or with both.

Being hired to take part in an unlawful assembly or riot:- Whoever is engaged, or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in Section 141, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Or to go armed :- And whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which used as a weapon of offence is likely to cause death, shall be

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90 Radharaman Shaha v. Emperor, 1931 ILR Cal. 1401.
punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

**Hiring persons for unlawful assembly** :- Section 158 makes it penal to hire oneself out as a member of an unlawful assembly, or to assist any members in an unlawful assembly or riot. The section is divided into two parts. In the first part of the section, where the person hires or attempts to be hired himself as a member of an unlawful assembly, punishment may extend to six months of imprisonment, or fine, or both. On the other hand, if the accused is found armed with a deadly weapon, punishment may extend to imprisonment up to two years, or fine, or both.

(vi) Offences relating to false evidence, public justice. (Sections 197, 212, 213, 215-219, 221-223, 225 A)

There are batch of sections in IPC which are relating to false evidence. The common fact among all these sections is that the false evidence is given always in connivance of other person. It means in all the above sections two or more persons are involved. Definitely under common intention they defy the legal process by cross expression of their intention which culminates into consent for doing of the act. Now we will study all the above offences where definitely there will be criminal act resulting from some hidden agreement consented thereto. First of all we will study Section 197 of Indian Penal Code.

**Issuing or signing false certificate** :- Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

(1) **False Certificate** :- The expression ‘issuing or signing false certificate’ required by law in evidence, means that the certificate should by some
provision of law be admissible in evidence as such a certificate without further proof.\footnote{Mahabir Thakur v. Emperor, AIR 1947 Cal. 466 (467).} Sections 197 and 198, I.P.C. relate to issue of false certificates. Section 197 makes issuing or signing of false certificate, and Section 198 using as true a certificate known to be false, punishable. To hold a person liable under Section 197 IPC:

(i) the certificate must be required by law to be given, or signed, or it must relate to any fact of which such certificate is by law admissible in evidence, and

(ii) it must be given or signed knowing or believing that it is false in a material point.\footnote{Charles E. Toreia, Wharton's Criminal Evidence, (1985) Vol. I, pp. 272-273.}

A certificate is a testimonial given in writing to declare or verify the truth of anything.\footnote{Deva Singh, 1878 PR 15 of 1879, Ratanlal and Dhrjalal, Law of Crimes, (1987) 23 rd ed, Vol I, pp. 714-717.} A copyist who makes an incorrect copy is guilty under this section.\footnote{Mahabir Thakur v. Emperor, AIR 1917 Cal 466.} But if a person, who is not required by law to give a certificate, gives a false certificate, he will not be liable under this section. For instance, the issue or use of a false medical certificate does not render a person liable under this section, or under Section 198, I.P.C. Likewise, a false certificate issued by a municipal chairman based on a Death Register is not covered under this section.\footnote{Balkrishna, AIR 1937 Pat 463.}

**Harbouring Offender (Section 212)**

For conviction under this section, some offence must have actually been committed and the harbourer must give refuge to one whom he know or has reason to believe to be the offender with the intention of screening him from legal punishment. This section has no application where the persons
harboured are not criminals but they have absconded merely to avoid or delay a judicial investigation.\textsuperscript{96}

**Taking gift etc to screen the offender from punishment (Section 213)**

**Scope** :- This section has no application to cases, where the compounding of an offence is legal. As to the scope of this section, there are contradictory views of different High Courts. In *Hemchandra Mukherjee*,\textsuperscript{97} the Calcutta High Court opined that this section applies only where there has been an actual concealment of an offence, or screening of a person from legal punishment or abstention of criminal proceeding against a person in lieu of some consideration.

However, the Bombay High Court\textsuperscript{98} has disagreed from this view and has held that this section does not require the actual concealment of an offence or the screening of any person from legal punishment or the actual forbearing to taking legal proceedings. It is sufficient if an illegal gratification is received in consideration of a person to conceal an offence or screen any person from legal punishment or resist from taking any proceedings.

**Taking gift to help to recover stolen property etc. (Section 215)**

**Taking or agrees or consents to take** :- The implication of these words is that the person giving and taking the gratification has not only agreed as to the object for which the gratification is to be given but also as to the form which the gratification is to take. In those case where the gratification has not actually passed and there is a disagreement as to the form or shape which the gratification is to take, the idea of agreement or consent is negatived.

**Deprived by any offence punishable under this Code** :- The act by which the property is deprived must be the subject of an offence punishable under

\textsuperscript{96} Ramraj Choudhary, (1945) 24 Pat. 604.
\textsuperscript{97} (1924) 52 Cal. 151.
\textsuperscript{98} Biharilal Kali Charan, (1949) 51 Bom. L.R. 564.
this Code. In case of *Sharfa*, the accused took Rs. 12 from the owner of the cow and promised to restore it in 10 days. Later on, he refused to return either the money or the cow. It was held that no offence was committed under this section.

**Unless he uses all means in his power to cause the offender to the apprehended**: The burden of proving the negative that the accused did not use all his power to cause the offender to be apprehended does not lie on the prosecution but it is on the defence to establish that the accused did all to cause the offender to be apprehended.  

**Harbouring offender who has escaped from custody or whose apprehension has been ordered (Section 216)**

On a comparison of this section with Section 212, it is apparent that this section deals with harbouring of an offender who has escaped from custody after being actually convicted of charged with the offence, or whose apprehension has been ordered. Section 212 deals with the offence of harbouring an offender who having committed an offence absconds. Thus the offence, contemplated under this section is an aggravated form of the offence punishable under Section 212.

This section takes into account only those cases where the man who is harboured is wanted for an offence for which a maximum sentence of at least one years' imprisonment is provided. No provision is made for those cases where he is wanted for offences for which the maximum sentence is less than one year.

**Public servant disobeying direction of law with intention to save person from punishment etc (Section 217).**

This section deals with disobedience on the part of a public servant in respect of his official duty. The object of this section is to punish a public

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99 (1914) P.R. No. 9 of 1915.
101 Deo Baksh Singh, (1942) 18 Luck 617.
servant who intentionally disobeys any direction of law to save a person from punishment. It is not essential to show that the person so intended to be saved, had committed an offence, or was justly liable to legal punishment.

In case of Amiruddeen, it was held by the Calcutta High Court that the public servant charged under this section is equally liable to be punished, although the intention which he had of saving any person from legal punishment was founded upon a mistaken belief as to that person's liability to punishment.

Legal Punishment does not include departmental punishment.

Public servant forming incorrect record or writing with intent to save person from punishment or property from forfeiture (Section 218)

This section prescribes punishment to a public servant who intentionally prepares a false record with the object of saving or injuring any person or property. The intention on the part of the public servant is an essential ingredient of offence under this section.

For conviction under this section, making of incorrect entry in the record is not sufficient but it is essential to show that the false entries were made with the intention to cause injury. A public servant shall be liable under this section even if the person whom he intends to save from legal punishment is himself.

'Actual commission of offence not necessary' :- Under this section, actual guilt or innocence of the alleged offender is immaterial if the accused believes him to be guilty and intends to screen him.

In Maulud Ahmad, the Supreme Court has held that if a police officer has made a false entry in his diary and manipulated other records with a view

102 (1878)3 Cal 412.
103 Jungle Lall, (1873) 19 WR (Cr.) 40.
104 Raghubanash Lal (1957)1 All. 368.
105 Nand Kishore. (1897)19 All 305.
106 Hurdut Surma, (1867) 8 W.R. (Cr). 68.
107 (1964)2 Cr. L.J. 71 (SC).
to save the accused from punishment, the mere fact that the accused was subsequently acquitted will not be of any help to the police officer.

Public servant framing incorrect record to save person from legal punishment: In case of Deodhar Singh, a Sub-Inspector was held liable under this section. The fact of the case was that the Sub-Inspector was given a warrant by the Superintendent of Police under the Public Gambling Act to arrest persons found gambling in a certain house. The Sub-Inspector, in order to save the persons from legal punishment under the Public Gambling Act in that house, framed a first information and a special diary incorrectly.

Public servant in judicial proceedings corruptly making report etc. contrary to law (Section 219)

This section should be read along with Section 77. This section is concerned with corrupt or malicious exercise of the power vested in a public servant for a particular purpose.

Intentional omission to apprehend on the part of Public servant bound to apprehend (Section 221)

The object of Sections 221, 222 and 223 is to provide punishment for intentional omission to apprehend, or negligently suffering the escape of offenders on the part of public servant bound to apprehend or to keep in confinement.

Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed (Section 222)

This section has similarly with the preceding section. The only point of distinction is that under this section the person to be apprehended has already been convicted or committed for an offence. Thus the offence under this section is an aggravated form of offence under Section 221.

108 (1899)27 Cal. 144.
Escape from confinement or custody negligently suffered by public servant (Section 223)

This section punishes a public servant who negligently allows any person charged with an offence to escape from confinement. The section consists of the following three essentials:

1. The offender must be a public servant.
2. He must be legally bound to keep in confinement a person charged with or convicted of an offence.
3. He must negligently suffer such person to escape.

The section will apply only when the custody is lawful. If a public servant is not entitled to keep a person in custody, he does not commit an offence by allowing that person to escape.

Omission to apprehend or sufferance of escape on part of public servant, in cases not otherwise provided for (Section 225A)

A public servant who is bound to apprehend or to confine any person and who intentionally or negligently omits to apprehend that person is to be punished under this section. The section provides for such punishments which are not within the purview of Sections 221, 222 or 223.

(vii) Offences relating to coin (Section 242-243)

Possession of counterfeit coin by person who knew it to be counterfeit when he became possessed thereof: - Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which extend to three years, and shall also be liable to fine.
Commentary :- This section makes punishable mere possession of a counterfeit coin provided it is kept fraudulently or with an intent to defraud, and its original acquisition was with the knowledge that it was counterfeit.

If a person is in possession of counterfeit coins which he did not know to be counterfeit at the time he possessed it no offence is made out.\textsuperscript{109}

Possession of India coin by person who knew it to be counterfeit when he became possessed thereof

Whoever, fraudulently or with intent that fraud may be committed is in possession of counterfeit coin, which is a counterfeit of Indian coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

An accused charged under Section 243 maybe proved to be in possession within the meaning of that section, if he is in possession in either of two modes, namely, (a) he may be in possession of the coin himself, or (b) he may be in possession, because his wife, clerk or servant is in possession of the coin on his account. Whichever mode of possession is established, it is essential to prove that at the time the accused became possessed of the coin, he knew it to be counterfeit.

In the course of a search of the house of the accused in connection with an offence under Sections 457 and 380 of the Penal Code, counterfeit coins were recovered from a cloth bundle kept inside a black wooden box under lock and key. The coins were examined and were found that they were counterfeits and in fact there was no denial as to this. The defence was that the coins at one time belonged to the S estate and were sold as a part of the estate's property. The purchase was ostensibly made by one M but the accused had a half-share

\textsuperscript{109} Kashi Prasad AIR 1950 All 732.
in it, with the result that the counterfeit coins fell in his share. After the purchase it was not shown that any attempt had been made by the petitioner to pass on the coins to other persons as genuine. It was held that the important element of the offence that the accused was in possession of counterfeit coins “fraudulently, or with intent that fraud may be committed,” had not been proved and, therefore, the charge under Section 243 and not been proved against him.110

It is difficult to establish by positive evidence that a man in whose possession counterfeit coin is found knew, when it came into his possession, that it was counterfeit. This difficulty is enhanced when the accused who is in a position to give an explanation refuses to give one. In such a case the guilty knowledge of the accused has to be inferred from the circumstances of the case and the conduct of the accused. The fact that at the time when the counterfeit coins came into his possession he knew that they were counterfeit need not necessarily be proved by positive evidence. The fact of knowledge can be inferred from his refusal to give explanation of its possession and his conduct and circumstances of the case.111

Where the accused keeps packets of counterfeit coins in a locked box and has its key with him, he will not keep them so secretly in a box under lock and key if he does not know them to be counterfeit and if he has no intention of pass them as genuine.112

A person who innocently comes into possession of counterfeit coins does not become liable to punishment under Section 243 by his subsequent discovery that they are counterfeit coins and retention of them.113

110 Gudar Sav v. Emperor 37 Cr LJ 1154.
111 King-Emperor v. Dhanna Singh, 44 Cr. LJ 542.
112 1968 All WR(HC) 577; 1968
It is certainly not intended that no person in possession of a house shall be convicted of being in possession of stolen property or counterfeit coin or anything of that kind if there happen to be other people living in the house and if it cannot be positively established that the person convicted had put the incriminating articles in the place where they were found. It must be shown in the first place that the incriminating articles were found in a place in the possession of the person to be convicted. In the next place, it must be shown either by direct evidence or by circumstantial evidence from which a reasonable inference can be drawn that the person to be convicted knew that these particular things were in the place where they were found.114

In the under noted case,115 the accused, a tea vendor who might be in need of coins of the denomination for business was found to be in possession of 85 alleged counterfeit coins. However, only 75 of those coins were produced before the trial court, but in appeal no coins were available for scrutiny by the High Court. It was held that the probability of innocent possession could not be ruled out.

**Exact resemblance, whether necessary:** Under Section 28 although the resemblance need not be exact, it is essential that the counterfeit must be of such a character that it would be possible to pass it off as a genuine coin and unless that is so, it would not be possible to practice deception which is one of the ingredients of the definition of counterfeit in Section 28. Therefore, where the evidence of the expert was that it was not possible to pass of the alleged counterfeit coins as genuine coins, the accused could not be said to have committed an offence within Section 243.

(viii) **Receiving the stolen property (Section 411-414)**

**Dishonestly receiving stolen property:** Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to

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114 *Tulsi Ram v. Emperor*, 37 Cr LJ 551.
be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

**Dishonestly receives or retains**:- The mere fact of possession of stolen property is not enough the constitute an offence under this section. There must be dishonest receiving or retaining. Where the accused’s cousins committed theft of two bullocks and the bullocks were found afterwards tied in the accused’s village along with the accused’s bullocks, it was held\(^\text{116}\) that the mere fact of possession did not in the peculiar circumstances of the case raise an inference of dishonesty. Where a stolen revolver was found in possession of the accused who were engaged in collecting arms and explosive substances and it appeared that the theft was not at all recent, the mere fact of possession was held not sufficient, for a conviction under this section.\(^\text{117}\)

“The use of the alternative expression ‘dishonestly receives or retains’, in one and the same section relieves the prosecutor of proving more than that the accused ‘either received or retained’ the property (of course in either case dishonestly), that is to say, the prosecutor need not prove that it was dishonestly received as distinct from dishonestly retained, or dishonestly retained as distinct from dishonestly received: it is enough to prove facts which justify the inference that the accused either dishonestly received the property or having received it honestly, dishonestly retained it. A similar use of an alternative expression is common throughout the Code in offences where a thing is said to be done ‘with the intention of causing a specified effect’, or with the knowledge that ‘the effect is likely to be caused’. In such cases the prosecution need not prove and the Court need not find the intention as distinct

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from the knowledge; it is sufficient to prove or to find one or the other to have existed".118

In the case of dishonest receiving, the offence is completed when the stolen property is received, the receiver knowing or having reason to believe at the time that the property was stolen property; whereas in the case of dishonest retaining the offence is committed not when the property is received but when after knowing or having reason to believe it is stolen, it is dishonestly retained.119

Mere negotiation to rescue stolen property would not suffice.120 For the applicability of this section the offences of theft and receipt of stolen property must be distinct offences separated in point of fact and time.

If a stolen article, almost at the very moment when it is stolen, is handed over by the thief to a companion who was with him at the time of the commission of the offence, the proper inference to be drawn from this circumstance is that the second person was in concert with him and not that he merely received the stolen property. To bring home a charge under Sections 379/34 it is not necessary for the prosecution to prove that the physical act of lifting the stolen property was committed by an offender himself. It is sufficient if it is established by evidence or circumstances that he shared the intention of committing theft with the actual thief.121

The act of dishonest removal within the meaning of Section 379 constitutes dishonest reception within Section 411 and that being so the thief does not commit the offence of retaining stolen property merely by continuing

120 (1850)4 Col Cri L 414.
to keep possession of the property he stole. The theft and taking and retention of stolen goods form one and the same offence and cannot be punished separately.\textsuperscript{122}

In \textit{Bama Jena v. The State},\textsuperscript{123} the Orissa High Court has held that doubtless there is a real distinction between receipt and retention. In some instances receipt of property may be honest, but subsequently when the offender comes to know that the property is stolen property and yet continues in possession of the same, he may be said to retain the same. But in Sections 411 and 412, the words ‘receives’ and ‘retains’ occur side by side and the collocation of receipt and retention of stolen property is obviously intended to do away with the necessity of proving the presence of dishonesty at the same time of its possession. As both receiving and retaining constitute one offence, the accused is not entitled to claim the nature of his possession specified, and it is sufficient if he is charged for receiving or retaining and evidence is abducted to prove guilty knowledge at some period antecedent to its recovery by the police. The Lahore High Court, however, has held in the undermentioned case\textsuperscript{124} that if the receptors of the property were innocent then it would be for the prosecution to show at what stage guilty knowledge of the receiver supervened to make the retention dishonest.

Dishonest intention is the \textit{sine qua non} of the offence under Section 411. Unless and until there is dishonest reception or retention of any stolen property, knowing or having reason to believe the same to be stolen property, the penal provisions of Section 411 would not be attracted. Where, therefore, pursuant to a hire purchase agreement and on the default of the purchaser to

\begin{itemize}
\item \textsuperscript{123} AIR 1958 Orissa 106 : 1957 Cr LJ 657: ILR (1958) Cut 131.
\item \textsuperscript{124} \textit{Emperor v. Saifal} AIR 1937 Lah 700 : 38 Cr LJ 1066 : 30 Punj LR 1.
\end{itemize}
pay the instalment amounts, the seller of a vehicle repossessed it, there was no dishonest intention to retain it on his part and hence no criminal proceedings could be made against him.  

It is not necessary that the stolen goods should have been physically produced from the actual possession of the accused. It is sufficient to show that the accused after the articles were stolen came into control of stolen goods and that he did so dishonestly or having reason to believe that it was stolen.  

Where exclusive possession remains in the thief, there cannot be a conviction for receiving.

Dishonestly receiving property stolen in the commission of dacoity (Section 412)

This section is an aggravated form of the offence under Section 411. This section deals with dishonest receipt or retention of stolen property, the possession of which he knows or has reason to believe to have been transferred by the commission of dacoity. The section refers to persons other than the actual dacoits.

Habitually dealing in stolen property (Section 413)

This section punishes the common receiver or professional dealer in stolen property. Casual receiver of stolen property may fall either under Section 411 or Section 412 according to the taint attaching to the stolen property.

Habitually: - A person who receives the proceeds of a number of different robberies from a number of different thieves on the same day cannot be said to be habitually receiving stolen goods. Habitual signifies "constant receipt of

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127 John Wiley (1850) 4 Cox 412.
128 ILR 19 Cal 190.
or dealing in goods which the prisoner knew or had reason to believe were stolen."  

**Assisting in concealment of stolen property (Section 414)**

Voluntarily assists in concealing or disposing of or making away with property :- Section 414 provides for the punishment of those who voluntarily assist in concealing or disposing of or making away with property which they know or have reason to believe to be stolen property. The section is intended to penalize persons who deal with stolen property in such a way that it becomes impossible to identify it or use it as evidence.

The words "disposing of" cannot be divorced from their context and the intention of the section is to punish persons who subsequent to the commission of the offence either conceal it or make away with it by destroying or otherwise disposing of it. The words "disposing of" do not cover spending of money stolen by somebody else and as such the section does not apply to a man spending money stolen by another.

The words "disposing of" must be interpreted by the light of the words they are associated with viz. "concealing" and "making away with" and they cannot be taken to include "restoring to the owners". The accused restored to the owners jewellery, which, there was some ground for suspecting had been stolen by his son. The accused was sent for trial as he would not explain from whom he got the property so returned. The Magistrate's finding was that the motive of the accused was to save his son from being punished and that his conduct in returning the property and them denying it with this object amounted to "assisting the act done by his son". The accused was convicted.

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129 Ibid.
131 Ibid.
under Section 414/380 of the Penal Code. It was held in appeal that the accused had committed no offence.

**Knows or has reason to believe to be stolen property:** It is for the prosecution to prove that the accused knew or had reason to believe that the property was stolen property. When the prosecution has not proved it by satisfactory evidence the accused is entitled to say that there is paucity of evidence and no amount of suspicion can take the place of evidence. However, the prosecution is not required to prove in what theft or in what manner the property was stolen.

Believe: The word "believe" in Section 414, Penal Code is much stronger than the word "suspect", and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property.

**(ix) Offences relating to documents etc (Section 475)**

**Commentary:** This section is supplementary to Section 472 and is intended to prevent the forgery of a persons’ signature or mark used in place, of signature, by engraving it on some substance or plate or forging it on a paper with the intention that it may be used for the purpose of giving the appearance of authenticity to a forged document. This section also punishes the possession of the prepared material etc. The document must be one of those specified in Section 467.

The first clause of the section is applicable only to the counterfeiter and requires not only proof of possession but also of the fact that the device or

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132 *Nga Yan E. v. Emperor* 11 Cr LJ 493 : 7 Ind Cns 365 : (1910)1 UBR 8.


mark was actually counterfeited by the accused. The second clause, however, is more general in terms and applies to a person who is in possession of “any material upon or in the substance of which any such device or mark has been counterfeited”. The charge thus must specify distinctly that part of the section which is applicable to the case. The charge must also clearly specify the papers bearing a counterfeit mark or device which the accused was alleged to have had in the possession with the requisite intention.¹³⁵

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