

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Ajay Kumar Gupta**

C.R.A. No. 417 of 2017

**Rajkumar Rishi
Versus
The State of West Bengal**

With

C.R.A No. 326 of 2017

**Prince Ghosh
Versus
The State of West Bengal**

For the Appellant in CRA 417 of 2017 : Mr. Ashok Banerjee,
Mr. Subodh Banerjee,
Mr. Samrat Banerjee

For the Appellant in CRA 326 of 2017 : Mr. Partha Sarathi Bhattacharyya,
Mr. Kalyan Kumar Chakraborty,
Ms. Swarnali Saha,
Mr. Gopal Krishna Sarkar,
Mr. Vivek Kr. Panda,
Mr. Kashinath Bhattacharyya

For the State : Mr. Debasish Roy,
Id. P.P., Mr. Partha Pratim Das,
Ms. Anusuya Sinha,
Ms. Trina Mitra

Heard on :06th March, 2025

Judgment on :11th March, 2025

Rajasekhar Mantha, J

1. These appeals are directed against the judgment and order of conviction dated 21st December, 2016 and 22nd December, 2016 passed by the Additional Sessions Judge 3rd Court in Malda in Sessions Trial no. 08 of 2012 arising out of Sessions Case no. 298 of 2011. The appellants were convicted under Section 302 read with Section 34 of IPC along with Section 4(a) of The Explosive Substance Act.

FACTS OF THE CASE

2. The prosecution case in brief is that the victim, Aparna Biswas, a teacher at Malda Ramkinkar Balika Vidyashram, was also a tenant in the house of Sitanshu Das (PW 3) at Malanchapally English Bazar, Malda. Her rented room was situated on the ground floor of the house.
3. On the 24th of April, 2011 when the victim was not at home, a courier (PW6) delivered a parcel to her residence. The said parcel was received by the daughter of the landlord Sonam Das (PW 2) at 11 am.
4. The courier stated that he was an employee of Nightingale Courier Service. After the victim returned home, she received the parcel from PW 2 and took it into her room.
5. The neighbours thereafter heard a loud explosion from the ground floor of the house of PW 3. He then rushed to the room of the victim with his wife (PW 4), daughter (PW 2) and neighbours and found the victim unconscious and bleeding heavily. The lower part of her body was completely charred, and the

room was filled with smoke. There was a smell of explosive substance and pins, blood stains and pieces of paper were strewn all over the floor and walls of the room. The cot was broken as well. The victim was immediately taken to the Malda District Hospital by the said persons, where she was declared dead.

6. A complaint was lodged on the same day, at about 2:45 PM, by the father of the victim (PW 1), in the English Bazar Police Station. FIR No. 240 of 2011 dated 24th April, 2011 was registered under section 302 read with section 34 of the IPC and sections 3 and 4 of the Explosive Substance Act, 1908. Appellant no. 1 Prince Ghosh was named as an accused. Prior thereto however the police had registered a UD case.
7. The investigating officer (PW 29) started investigation. He visited the place of occurrence and seized pieces of paper, some of which were blood-stained, pieces of blood-stained cloth, part of torn plastic table cloth, the blood-stained wooden part of a broken cot, one blood-stained white blanket, some pins and some skin with flesh collected from the side wall and some particles from the smoke-stained wall and some blood from the floor, a burnt wire, a switch, a part of a battery with the writing AKARI, lying on the floor, a piece of wearing apparel and a black Nokia mobile phone.
8. The Malda police conducted inquest on the victim at the district hospital on the next day. Several injuries associated with the explosion were found on the body of the victim broken pieces of wood pins. The body was thereafter sent for postmortem.

9. Upon making enquiries the police started to search for the appellant they were not found in the respective place of residence. They were found together at a fresh place in Sujapur and arrested. The mobile phones of the appellants were seized by the police under a seizure list.
10. After being apprehended the appellants recorded confessional statement under Section 27 of the Evidence Act. They voluntarily confessed to the investigating officer, the place where they stored the said bomb-making material and prepared the bomb and also offered to surrender the same. The exact words used by the appellants in Bengali vernacular were duly recorded. Based on their confessional statement, the appellants showed the investigating officer their respective homes. Thereafter the IO produced the accused persons in Court and were allowed police remand for 2 weeks.
11. The appellant no. 1 Prince Ghosh was taken to his residence at Sarada Colony Mangalbari under Malda PS, where he showed the police all the materials and articles he had that were used to manufacture the parcel bomb. All these were found in a plastic carry bag. The material comprised in some red and blue coloured cables connected to 2 poles of one AKARI PLUS battery with a fitted switch. There were two more packets, one with a white dust material and the other with an orange dust material. Apart from these, there was an electrical instrument (Tatal), some materials for welding wires and a testing meter named "SPICE".
12. The appellant no. 2 Raj Kumar Rishi also took the I/O to his residence at

Sujapur, and all the bomb-making materials used by him to prepare the parcel bomb were seized by the police. The materials seized by the police were the same as those seized at the residence of Prince Ghosh. The said articles discovered at both residences were seized under a seizure list, signed by independent witnesses.

13. All seized articles including mobile phone was sent for forensic examination by the investigating officer. Investigation was completed and chargesheet was filed thereafter against the appellant. Charges were framed against the appellants by the sessions Judge under Section 302 read with Section 34 of 'IPC and Sections 3 and 4B of the Explosive Substance Act.
14. The Call Data Records of the mobile phones of the accused and the victim and that of the Courier service personnel (PW6,7 and 8) were also duly obtained from the service provider M/S Aircel Ltd. (PW-32).
15. The trial commenced wherein PW 1 who was also the complainant narrated the incident. He stated that he had deposed before the police that the victim had a love affair with the accused/appellant no. 1, Prince Ghosh, under the impression that he was an electrical engineer. Later on, when she came to know that Prince had not even cleared the Secondary examination and was an electrician. The victim cut off relations with him. The victim was already a divorcee by such time.
16. PW 2 was the daughter of the landlord. She deposed that at about 11 am on the 24th of April, 2011 an unknown person called out the name of the victim

from near the gate of their house. As the victim was not at home, PW2 signed and received a parcel on behalf of the victim and took it to the first floor of the house. The parcel had the name of the victim "*A. Biswas, C/o Sitanshu Das, Vill. Malanchapally, P.S. English Bazar, Dist. Malda*". The name of the sender was "*S. Biswas, Vill. V. Pally, P.S. Gazole*". Upon the victim's return to the residence, PW 2 gave the parcel to her. She later heard a huge explosion on the ground floor where the victim was residing as a tenant. She rushed to the ground floor along with PW 3, PW 4, and PW 5 and found the victim unconscious with the lower part of her body burnt. The cot on which the victim was sitting, was broken. She stated that room was filled with smoke, the smell of explosive substance. There were pins and pieces of paper and blood stains everywhere on the floor and the walls. She along with PW 3, 4, and 5 took the victim to a local hospital.

17. PW6, Sahadeb Singh, was an employee of the Nightingale Courier Service at his branch near Gazole bus stand. The principal office of the Courier Service was at Malda town. The proprietor of the Courier Service company was Saktiranjana Basak (PW-7). He stated that on the 22nd of April 2011 two persons deposited the said parcel at a branch office at Gazole, wherein his nephew, Asit Singha (PW8) issued consignment voucher No. 5541, for a delivery charge of Rs. 60/- The said two persons also took his phone number from Asit Singha.
18. He later confirmed that on the 23rd of April 2011, a person contacted him and enquired about the reasons for the non-delivery of the parcel to the addressee.

19. PW 6 informed him that the parcel would be delivered soon. He also provided the landline number of the main office of the courier service at Malda. He claimed that the person who called him threatened him with legal proceedings if the parcel was not delivered within the time. He also stated that the police seized the consignment voucher book of the courier service.
20. PW7 was the owner of the Nightingale Courier Service, Saktiranjana Basak. He stated that on the 23rd of April, 2011 he received a phone call on his landline from a person who asked for the parcel to be delivered immediately and threatened him with legal proceedings. He further stated on 23 April, 2011, the two appellants came to the office of the Nightingale Courier Service at Malda and enquired whether the parcel had been delivered or not. The two appellants were identified by PW 7 in Court. PW7 further attempted delivery of the parcel to the addressee and upon not finding the addressee/victim at home, delivered the same with PW2. He signed on the seizure list dated 24th April 2024 and also produced the delivery voucher being exhibit three.
21. PW8 was the nephew of PW 6. At the relevant point in time, he assisted his uncle in running the courier service business. He received the parcel from the appellants at the Gazole branch of the courier service office. He identified the appellants that delivered the parcel to him on 22nd April, 2011. He stated that a despatch voucher was issued to the appellants by him and Rs.60 was charged for the delivery.
22. PW 9 was another local resident.

23. PW 17 was the mother of the victim. She knew of the initial relations between the appellant Prince Ghosh and the victim, and that her daughter cut off relations with the appellant after he discovered that he was not an Electrical Engineer and had not even cleared the Madhyamik examination. She further confirmed that the appellant Prince used to threaten the victim and identified him in Court. She further deposed the victim was earlier married to one Sanjoy Majumdar, but she never resided with him, after marriage. PW 17 did not even have knowledge about the divorce proceedings of her daughter.
24. PW 18 was Saharul Biswas who signed on the seizure list of the articles for bomb-making at the residence of appellant no. 1 and 2 i.e. dated 25th April, 2011 and 30th April, 2011. He turned hostile in the cross-examination by the prosecution and denied having given any statement to the police.
25. PW 19 was another seizure witness who stated that he had signed the said list at the English Bazar where he came for personal work. He was declared hostile but had not stated the reason why he visited English Bazar on the said date when he signed on the seizure list.
26. PW 23 was the brother of the victim. He deposed exactly what was stated by his mother and father in course of trial.
27. PW 25 is the PM doctor who has opined that the cause of death was due to the effects of the explosion.
28. PW 29 of the investigating officer, Alok Bhowmik. He narrated the entire chain of events as indicated above and indicated the steps taken in the investigation.

29. PW 31 was Soumya Mukherjee, the officer-in-charge of the District Crime Record Bureau Malda. He emailed the service provider to request the call records of the appellant's mobile phone. He said the printout taken by the email was from his own computer as he was the administrator, and there were no other computers in his office.
30. PW 32 was the nodal officer of the service provider Aircel. He provided the call data records of the two appellants' phones under exhibit 19/5.
31. The two accused were examined under section 313 of Cr.P.C., and all incriminating circumstances that emerged in the evidence against them had been duly contradicted. They have merely stated that the allegations that all such circumstances are false. The Trial Judge thereafter duly analysed the evidence on record, the FSL report, and the medical report and found the appellant guilty of the charges and convicted them for imprisonment for life and fine of Rs. 10,000/- under Section 302 read with section 34 of IPC. They were also convicted for a period of 10 years and were directed to pay a fine of Rs. 2,000/- for offence under section 3a of the Explosive Substance Act.
32. Learned counsel for appellants has argued that the confessional statement leading to the discovery of the bomb-making material cannot be admitted as evidence under Section 27 of the Evidence Act since the appellant Prince Ghosh has not indicated the exact place where the bomb-making material was located.
33. Counsel for the appellants would rely upon a decision of the Supreme Court in

the case ***Hansraj v. State of MP*** reported in **2024 INC 318** (paragraphs 13 and 14). In the said case, the exact words spoken by the accused at the time of confession were not recorded by the IO. The Court also found that the accused had lied to the IO about the place where the articles were hidden. He stated that he took the accused to "Beed" and the stolen jewellery was thereafter found and retrieved. The Complainant could not identify the said jewellery and took the same based on the directions of the IO.

ANALYSIS AND FINDINGS OF THE COURT

34. In the instant case, this Court notices that the investigating Officer specifically recorded that the accused (Prince Ghosh) stated in the Bengali vernacular that he wanted to hand over the materials for manufacturing the parcel bomb, which he kept in his residence. Appellant no. 1 thereafter took the IO to his residence and showed him all the leftover materials he had that were required to make a bomb.
35. Similarly, the accused/appellant Raj Kumar Rishi confessed in writing in vernacular that he would show the IO where the bomb-making articles were located and that he wanted to hand over the same to the police. He then took the investigating officer to a house in Kurulpara village, Sujapur under Kaliachak Gram Panchayat. He showed the articles of making a bomb to the IO.
36. The underlying ratio of ***Hansraj (supra)*** emerges from paragraph 12 thereof, namely that the accused must reveal the *exact* place of presence of

incriminating materials to the police. The reason is that the information, given to police by the accused leading to the discovery of the materials, must 'distinctly' relate to the fact, discovered as a result of such a revelation. Here, the fact 'discovered' does not only include the particular place and the materials, recovered therefrom. Rather, it also includes the mental awareness of the accused about the presence of the incriminating materials in that place. Information given under Section 27, therefore, cannot be vague, which was the case in ***Hansraj (supra)***. Section 27, therefore, mandates exactitude in the given information.

37. The appellants herein have zeroed down on the place of presence of the bomb-making materials by directing the police to their respective residences, from where the said materials have been recovered. The appellants have, therefore, proved their mental awareness about the presence of the bomb-making materials in their respective houses. These materials are found to have been used to make the bomb contained in the parcel. On top of it, the place from where such materials were recovered is related to the appellants being their respective residences. This adds one more circumstance in the chain of circumstances pointing towards the guilt of the appellants. Had the materials been recovered from a place not related to the appellants, the liability thereof upon the appellants would not have been readily imposed.
38. The above view finds support in the decision of the Supreme Court in ***Perumal Raja @ Perumal v. State, Rep. by Inspector of Police*** reported in **2024 INSC**

13. Paragraphs 22 and 30 are set out below:-

22. However, we must clarify that Section 27 of the Evidence Act, as held in these judgments, does not lay down the principle that discovery of a fact is to be equated to the object produced or found. The discovery of the fact resulting in recovery of a physical object exhibits knowledge or mental awareness of the person accused of the offence as to the existence of the physical object at the particular place. Accordingly, discovery of a fact includes the object found, the place from which it was produced and the knowledge of the accused as to its existence. To this extent, therefore, factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. In *Mohmed Inayatullah v. State of Maharashtra*, elucidating on Section 27 of the Evidence Act, it has been held that the first condition imposed and necessary for bringing the section into operation is the discovery of a fact which should be a relevant fact in consequence of information received from a person accused of an offence. The second is that the discovery of such a fact must be deposited to. A fact already known to the police will fall foul and not meet this condition. The third is that at the time of receipt of the information, the accused must be in police custody. Lastly, it is only so much of information which relates distinctly to the fact thereby discovered resulting in recovery of a physical object which is admissible. Rest of the information is to be excluded. The word 'distinctly' is used to limit and define the scope of the information and means 'directly', 'indubitably', 'strictly' or 'unmistakably'. Only that part of the information which is clear, immediate and a proximate cause of discovery is admissible.

30. However, evidentiary value to be attached on evidence produced before the court in terms of Section 27 of the Evidence Act cannot be codified or put in a straightjacket formula. It depends upon the facts and circumstances of the case. A holistic and inferential appreciation of evidence is required to be adopted in a case of circumstantial evidence.

Emphasis applied

39. In the above circumstances, this Court is of the clear view that the provisions of section 27 of the Evidence Act have been duly followed, and consequently, the factum of recovery of the bomb-making articles from the respective residence of the accused/appellants as a result of the information given by the accused/appellants to the police when they were in police custody are admissible in law.
40. It is next argued that the date and time of the confessional statements are not mentioned on the same. The oral evidence of the investigating officer clearly

indicates the date and time of confession. In terms of paragraph number 30 of **Perumal (Supra)**, section 27 has to be read holistically and applied pragmatically. In cases based on circumstantial evidence, it was held that the court shall carry out an inferential appreciation of evidence. The oral deposition of the investigating officer indicating the date and time of the recovery and the information received, which has withstood the test of cross-examination, therefore, has to be accepted. Unless the accused, against whom Section 27 has been directed, demonstrates that an unexplained and undue delay has intervened between the date of the receipt of information and the date of recovery, the application of Section 27 cannot with thwarted on this score. Therefore, the said argument of the learned counsel for the appellant is not acceptable.

41. Learned counsel for Raj Kumar Rishi has relied upon the decision of the Supreme Court in the case of **H.D. Sikand v. CBI** reported in **(2017) 2 SCC 166**, particularly paragraphs 12 and 17. It is argued that the chain of circumstances from which the conclusion of guilt has been arrived at is not established and the chain is not complete. The chain of circumstances must be established comprehensively and should lead to the guilt of the accused, and no other hypothesis should be possible. He, however, has not pointed out any alternate hypothesis which may have resulted in the death of the victim and runs contrary to the guilt of the accused. On the same proposition, the case of **State of Punjab v. Kewal Krishan** reported in **2023 13 SCC 695** is

cited by Counsel for the appellant. It is held that in a case based on circumstantial evidence, the prosecution must prove beyond reasonable doubt, each of the incriminating circumstances which should unerringly lead to the guilt of the accused.

42. Reliance is lastly placed in the case of ***Krishnamurthy and Ors. v. State of Karnataka*** reported in **(2022) 7 SCC 521**, particularly paragraph 9. It was held in the said case that Section 34 of the IPC is attracted when the co-participant could and should have knowledge that the actions would result in the final act that is the offence itself. He has argued that the chain of circumstance is not complete in the instant case.
43. This Court is unable to agree with arguments advanced by Learned Counsel for the appellants. The first and most vital link in the chain is the motive of the appellants. PW 1, the father of the deceased, stated that the victim had a love affair with Prince Ghosh of Mangalbari. At the Inception, Prince Ghosh informed the victim he was an electrical engineer. The victim was a post-graduate and Prince Ghosh actually did not even pass the class 10 examination. Upon coming to know of the same the victim refused to marry Prince and discontinued relations with him.
44. PW 1 further stated that Prince threatened to kill the victim several times if she did not marry him. The said evidence is corroborated by PW 17, the mother of the victim and PW 23, the brother of the victim. There was also an independent corroboration from the victim's colleague and friend, PW 21 Laxmi Sarkar.

45. The above love affair of the appellant Prince with the victim and the subsequent breakup between them on the disclosure of the educational status of the former to the latter has not been explained by him in his answer to the questions put under section 313. *Mere denial* in answers does not explain away and discard the incriminating circumstances, appearing from the evidence against the accused. The mandate of section 313 is that the accused must have an opportunity to *explain* but not merely deal with the incriminating circumstances with cryptic denials.
46. Appellant No. 1 was the only direct witness to the fact of the said love affair and breakup, after the unfortunate passing away of the victim. It was, therefore, incumbent upon him to discard the motive attributed to him by dislodging the correlation between three circumstances, namely- the said love affair, subsequent breakup, and the vengeance and urge to take revenge against the victim, which was executed by sending explosives wrapped in a parcel to the victim. The motive of the crime is, therefore clearly and definitely established. Reference In this regard is made to the decision of the Supreme Court in ***Nusrat Parween v. State Of Jharkhand*** reported in **2024 INSC 955:-**

9. Firstly, we proceed to consider the theory of motive. It is trite law that proof of motive is not sine qua non in a case of murder. **However, in a case based purely on circumstantial evidence, motive if properly established, assumes great significance and would definitely provide an important corroborative link in the chain of incriminating circumstances and strengthen the case of prosecution.....**

Emphasis Applied

47. The second link in the chain of circumstances is the knowledge of the location of the bomb-making materials in the respective houses of the appellants, disclosed to the investigating officer by the two appellants. Their confessional statement clearly led to the discovery of the bomb-making and explosive substances from their respective houses by the investigating officer.
48. The appellants have admittedly placed two storybooks- one by Agatha Christi under the bomb, and pieces of paper were found on the scene of the crime. The remains of the bomb were tested in the FSL, which indicated that the white and orange powders forming part of the remains were explosive substances namely potassium nitrate and other chemicals. A detonator was also found created by an electric circuit using a battery to ignite the chemicals in the parcel to explode upon the packet being opened. The remains of the parcel bomb from the PO and the materials collected from the possession of the appellants, disclosed by them, have been certified by the FSL as explosive and combustible chemicals that can be used for making parcel bombs.
49. The anxiety shown by the appellants in the delivery of the parcel is inconsistent with the ostensible purport of the parcel namely the delivery of the two books. While any dispatcher is keen on delivery of a courier parcel, the tearing hurry to get the parcel delivered was, therefore, to actually ensure the explosion of the bomb upon the victim who was the target. The appellants would not keep the parcel containing the bomb in the hands of the person, who is not targeted

for the explosion. Expectedly, they were growing anxious with every single moment of delay in the delivery of the same. The anxiousness of the appellants is a mental condition that runs against their innocence.

50. Admittedly, the appellants assigned the job of delivering the parcel to said the courier service provider. They, however, did not use any of their names as the sender of the parcel. This suppression and impersonation also runs contrary to the innocence of the appellants and another link in the chain of circumstance.
51. A battery with the name 'AKARI' printed on it was recovered from the PO. The battery with the same brand name was also recovered from the residence of appellant no. 1. This directly confirms the brand of the battery, inter alia, recovered from the house of appellant no. 1 having been also used in the making of the bomb contained in the parcel. This circumstance connects the appellant no. 1 (Prince Ghosh) with the PO.
52. PW 8 received the parcel from the two appellants and the courier at the Nightingale Courier Service at Gazole branch office. PW 8 was the nephew of Shahdab Singha (PW 6), who was in charge of the branch of Gazole. PW 8 identified the two appellants who delivered the parcel containing the bomb on 22 April 2011, and paid rupees 60 as delivery charge. The parcel was marked to be delivered to A. Biswas (C/o Sitanshu Das village VIII. Malanchapally, P.S. English Bazar, Dist. Malda) where the victim resided. He issued a voucher, being number 5541, to the appellant.

53. PW 7 deposed that on 23rd April 2011 at about 8:30 p.m., two persons came to the main branch of the Nightingale Courier Service at Malda and inquired why the parcel addressed to the deceased had not been delivered. The two appellants had been identified by PW 7 on the 24th April 2011 at about 11 a.m. When PW 7 personally went to deliver the parcel at the residence of the deceased, however, she was not found thereat. The parcel was received by PW 2, Sonam Das, daughter of the landlord, on behalf of the deceased, who deposed that she kept it on the first floor of the house.
54. The proof of delivery was a yellow voucher (exhibit 3). When the deceased returned to her residence, PW 2 gave her the parcel, and the deceased went into her room. Immediately after PW 2, PW 3, PW 4 and PW 5 heard a loud explosion coming from the room of the deceased. When they rushed to the ground floor, they found the deceased lying on the floor with the bottom part of her body completely burnt.
55. There was smoke and pieces of paper all over the place. Pieces of flesh were scattered around, and there were blood stains on the cot. The victim had several burn injuries on the victim's body. The PM report confirms that the victim died due to injuries sustained by the explosive chemicals. Such chemicals were found on the body of the victim as certified by the FSL.
56. The aforesaid facts have comprehensively established all links in the chain of circumstances and complete the same. The other links are the preparation of the parcel bomb by the appellant and consigning it to the victim by courier

service of PW 7 and PW 8, and the apparent innocuous delivery of the parcel to the victim.

57. In the backdrop of the above, this Court is of the clear view that the chain of circumstances is complete and clearly establishes the guilt of the appellant in the cause of death of the victim with the help of a parcel bomb. There is no other conclusion possible than to indicate and establish the guilt of the appellants. In this regard, the decision of the Supreme Court in ***Nusrat (supra)*** may be referred to:-

7. It is a well-established principle of criminal jurisprudence that conviction on a charge of murder may be based purely on circumstantial evidence, provided that such evidence is deemed credible and trustworthy. In cases involving circumstantial evidence, it is crucial to ensure that the facts leading to the conclusion of guilt are fully established and that all the established facts point irrefutably to the accused person's guilt. The chain of incriminating circumstances must be conclusive and should exclude any hypothesis other than the guilt of the accused. In other words, from the chain of incriminating circumstances, no reasonable doubt can be entertained about the accused person's innocence, demonstrating that it was the accused and none other who committed the offence.

58. The evidence of the independent witnesses is more conclusive and supports the finding of guilt of the appellant. In the backdrop of the above, this Court is in complete agreement with the finding of the Trial Judge.
59. Insofar as the common intention is concerned, both the appellants admitted to the preparation of the parcel bomb with the materials in their custody. They jointly disclosed the location of bomb-making equipment which led to the discovery. They delivered the parcel addressed to the victim, to PW 8, who was managing the courier office of Nightingale Courier Service at Gazole.
60. The call data records of the telephone number of the appellant's friend leads to

his established telephonic conversation with PW 7 and PW 8, about the parcel bomb. The two appellants jointly threatened PW 7 and PW 8 with legal consequences if the parcel was not delivered.

61. The decision of the Supreme Court in **Vasant @ Girish Akbarasab Sanavale & Anr. v. The State Of Karnataka** reported in **2025 INSC 221** on the ingredients of common intention is set out herein below:-

39. In order that an intention should be common, it should be attributable to every member of the group. This is also clarified by the fact that the section itself characterises the common intention to be the 'common, intention of all'. Section 34, IPC, therefore, does not ignore the intention of the individual offender.

40. It only adds some more persons in the commission of the offence and postulates that the same intention was jointly existing in the mind of every individual member of the group as well. It may be that the intention was alleged to be common, but that only means that every member shared it along with others and not the some members shared it and others did not.

41. The common intention required under Section 34 Penal Code need not, however, be identical with the guilty intention or 'mens rea' which is the ingredient of the offence and is to be distinguished from it. The latter might be coincident with or collateral to the former.

48. Under Section 34 every individual offender is associated with the criminal act which constitutes the offence both physically as well as mentally. That is, he is a sharer not only in what has been described as a common act but also in what is termed as the common intention, and, therefore, in both these respects his individual role is put into serious jeopardy although this individual role might be a part of a common scheme in which others have also joined him and played a role that is similar or different.

49. To put it in other words, whereas under Section 149, IPC the entire emphasis both in respect of the physical act as well as in respect of the mental state is placed on the assembly as a whole, **under Section 34, IPC, the weight in respect of both is divided and is placed both on the individual member as well as on the entire group.**

50.....If, therefore, a person is charged with an offence with the application of Section 34, IPC, and convicted for the substantive offence only, **it is not so easy for him to advance the plea that he was not aware that the matter had any individual aspect.**

53. On the other hand, under Section 34, IPC, a mere agreement, although it might be a sufficient proof of the common intention, would be wholly insufficient to sustain a conviction with the application of Section 34, IPC, unless some criminal act is done in furtherance of the said common intention and the

accused himself has in some way or the other participated in the commission of the said act

55. Section 34, IPC, compendiously summarises the liability imposed under English Law on **what are therein called as principal in the first degree and principal in the second degree and assimilates the principles underlying both by compressing them in one section and treating them as what have been called accessories at the fact** as opposed to what are termed as accessories before the fact and accessories after the fact.

60. It is, therefore, sufficient to hold a party as principal, if it is made to appear that he acted with another in pursuance of a common design; that he operated at one and the same time for the fulfilment of the same pre-concerted end, and was so situated as to be able to furnish aid to his associates with a view to insure success in the accomplishment of the common enterprise”

64. The word ‘criminal act’ is used in Section 34, IPC in the broadest possible sense. It would cover any word, gesture, deed or conduct of any kind on the part of a person whether active or passive, which tends to support the common design....

73.....Thus, if two persons conspire to commit theft and devise a plan according to which one of them would lure the shopkeeper away to an adjoining room on the pretext of having conversation with him thereby leaving the shop unprotected in order to enable the other persons to commit theft and the scheme is executed according to the plan, both of them would be equally guilty of theft by the application of the provisions of Section 34, IPC although their respective acts are of a very different type.

74. In such a case, although only one man has committed the actual theft and the other has done nothing except entering into a friendly chat with the shopkeeper with a view to secure his removal from the scene, yet the part played by the latter is no less important than that of the former.

62. From the above, the following principles emerge:-

- i. There must be a plan to execute an illegal enterprise.
- ii. The plan must have to be executed by 2 persons or more. In the absence of any of the two, the final illegal act will become impossible of execution.
- iii. The common intention of the co-participant need not be a guilty intention which should be present in the protagonist of the crime meaning thereby that, a person may ask his friend to help him to kill a person. That friend may not have had an *independent* guilty mind of ending the life of the person. However, if he agrees to help his friend in his pursuit of killing the person, and further does any act that *facilitates* the murder, the friend is

guilty of murder. The common intention then springs into action.

- iv. Section 34 requires the members to have *individual* mental and physical awareness of the final crime, to be committed by them. The level and degree of contribution to the commission of the final crime may vary.

63. The starting point of the common intention of the appellants is first discerned from the recovery of bomb-making equipment from their respective houses. It matures with the joint threat given by both the appellants to men and agents of courier service provider for the expeditious delivery of the parcel. Besides, the individual act on the part of Appellant No. 2 is his coordination with PW 7 and PW 8 via calls, who are from the courier service, for the delivery of the bomb wrapped in the parcel is indicative of his independent contribution to the facilitation of the murder.

64. The above clearly establishes the common intention under Section 34 of the IPC to cause the death of the victim with the help of the parcel bomb. The accused Rajkumar Rishi was, undoubtedly, both mentally and physically aware that the bomb made and sent via courier to the victim would cause serious injury, which, in the ordinary course of events, would lead to the death of the deceased, as evident from the fact that bomb-making equipments were also recovered from his residence, meaning he was aware of the consequences that the bomb in the parcel is capable of producing. The ingredients of Section 34 of the IPC are also clearly established.

65. Insofar as the email received from the mobile service provider along with all data records of the mobile phone of Prince Ghosh, received by PW 31, he was

authorised by the superintendent of police to obtain such call data records of the appellant Prince Ghosh from the service provider, namely Aircel.

66. PW 32 is the Nodal Officer located at Calcutta who confirmed reverting to the email along with call data records to PW 31. The said data and email have been accepted as Exhibit Nos. 19 and 20 without any objection. The argument of learned Council for Prince Ghosh, that the email cannot be admitted without admission in terms of section 6 of the Information Technology Act, and 65B of the Evidence Act therefore cannot be accepted.
67. The Trial judge has therefore rightly convicted and sentenced the appellants as described hereinabove. The impugned judgement and order of sentencing calls for absolutely no interference.
68. In view of the above this Court is of the view that the appeals must fail and are therefore hereby dismissed.
51. Urgent photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

(Rajasekhar Mantha, J.)

I agree.

(Ajay Kumar Gupta, J.)