mitigating ... constitute necessary ingredient of the ...

**"Intention".**—'Intention' is a state of mind which is not ordinarily ascertainable but is to be gathered or inferred only from external acts and for this purpose it is very necessary to examine the act itself of the accused.[4] By "intention" is meant the expectation of the consequence in question. It is a universal principle that when a man is charged with doing an act, of which the probable consequence may be highly injurious, the intention is an inference of law resulting from the doing of the act. Intention does not imply or assume the existence of some previous design or fore thought. It means an actual intention, the existing intention of the moment, and is proved by or inferred from, the acts of the accused and the circumstances of the case. Criminal intention simply means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. The word "intent" does not mean the ultimate aim and object nor it is used as a synonymous for motive. It hardly needs any explanation that intention cannot be proved by direct evidence which is rarely available and therefore it has to be inferred from surrounding circumstances.[5] Accused repeating blow can be burdened with knowledge that blow would positively result in death but he cannot be burdened with intention to commit murder.[6]

**Common intention.**—To bring a case within the ambit of section 34, P.P.C. it is necessary that some overt act or acts must be established to lead to the inference that the participators in the crime acted in pre-concert or under pre-arranged plan but this does not mean that every participant in the crime must be shown to have committed the same kind of act. To establish common intention, it was necessary to have direct proof of pre-planning, premeditation, consultation and instigation, which leads to the inference, or the incriminating facts must be incompatible with the innocence of accused and incapable of any other explanation. Common intention would imply acting in pre-concert in pursuance of pre-arranged plan, which was to be proved, either from conduct or from circumstances or from incriminating facts.[7] It is sufficient to show that they joined together in the commission of a particular act, for, then they must all be

deemed to have intended the natural and inevitable consequences of that act even if some of them did nothing but merely helped by their presence in the commission of the act. The question thus resolves itself into this, namely; as to whether the person sought to be made constructively liable did do anything with an intention to co-operate in the offence, if so, he is liable.[1] It can be found at the supur of moment.[2] To attract section 34 it has to be established that the accused was animated with common intention as distinct from similar intention.[3] 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. Where, a common intention of two or more persons to kill the deceased is established, the question as to who gave the fatal blow is wholly irrelevant and once the medical evidence shows that the injuries caused by one or the other of the accused was sufficient in the ordinary course of nature to cause death, that is sufficient to bring the case within the purview of this section.[4]

Deceased was surrounded by accused and co-accused, whereafter one of the co-accused shouted "maro maro", as a result of which the accused fired at the deceased. Deceased pleaded to be taken to hospital, but accused and co-accused did not do the same, despite presence of an official vehicle at the spot. Deceased consequently bled to death. Accused deliberately and wilfully shot the deceased at the instigation of the co-accused persons and they let him bleed to death without offering him any assistance. Such sequence of events abundantly displayed the common intention and object of the accused and co-accused persons.[5]

Witnesses who were examined not undergoing the test of Tazkiya-al-Shahood, offence against accused punishable under section 302(b), P.P.C. with death or imprisonment for life as *'ta'zir'*, whereas, section 308 applicable when punishment of *qisas* was to be awarded. Both accused persons who were brother and sister were found to have shared the common intention. High Court rectified by altering the sentence from section 302(b) to section 302(c), P.P.C. Both the accused were not alleged to have inflicted any injury to the deceased while intention to commit crime was also not on their part. Such fact also created mitigating circumstances for awarding lesser sentence of imprisonment for life.[6] Accused killing his mother. Prosecution establishing the case against accused. Conviction is required to be recorded under section 302(b), P.P.C. and not 302(a), P.P.C.[7] Section 307, P.P.C. read with section 308, P.P.C. can only apply in a conviction recorded under section 302(a), P.P.C. and not under section 302(b), P.P.C.[8]

**"Mens rea".**—"Mens rea" is an element of criminal intent, a guilty mind; a guilty or wrongful purpose, it embodies guilty knowledge and wilfulness. In the case of a statutory offence the presumption is that *mens rea* is an essential ingredient unless the statute creating the offence to express terms or by necessary implication rules it out. The mere omission of the word "knowingly" or "intentionally" is not sufficient to rebut this presumption for all that such words do is to say expressly what is normally implied. Thus where the words used in the statute are not clear or unambiguous an examination of the general scheme and object of the statute becomes necessary to determine whether the general rule of liability has been departed from. In some cases even the quantum of the punishment has been taken into account for determining this question though this by itself cannot be conclusive.[1] The Supreme Court of Pakistan acknowledging this principle has recently held, it is well settled by now that, even in the cases of a statutory offence, the presumption is that *mens rea* is an essential ingredient unless the statute creating the offence by express terms or by necessary implication rules it out. The mere omission of the word "knowingly" or "intentionally" is not sufficient to rebut this presumption for all that such words do is to say expressly what is normally implied.[2] Under the Penal Code not constructive but an actual intention is required.[3]

**"Motive".**—Motive in legal parlance was ordinarily not considered as a principal or primary evidence in a murder case, however in rare cases, motive did play a very vital and decisive role for committing murder.[4] Significance of motive in a case of murder was to establish as to who could be interested in killing the person murdered and such factor was to provide corroboration to the ocular account furnished by the prosecution but where the accused person admitted killing the deceased there the primary purpose of setting up the motive stood served.[5] Motive is not sine qua non for the proof of commission of crime and at time motive is not known to any other person, other than the deceased or accused, which can never surfaced on the record. Motive is always very relevant to determine quantum of sentence that might be awarded to a person against whom charge of murder is proved.[6] Accused person could not be convicted on a charge of murder exclusively on the basis of a motive alleged against him.[7] Normally motive was of no avail and in certain cases which were motiveless, conviction could be recorded. Once motive was alleged by complainant in report, same must be proved, and in case of failure, the benefit must go to the accused.[8] Motive is always state of mind of accused which cannot be proved through

1. PLD 1967 SC 1.
2. PLD 2005 SC 530; PLD 1967 SC 1.
3. 1995 PCr.LJ 1807.
4. 2015 SCMR 315.

ocular account and it is always a guess of prosecution. Insufficiency or weakness of motive would not be a ground to discard other reliable evidence.[1] Motive as defined in the Black's Law Dictionary is the moving course, the impulse, the desire that induces criminal action on part of the accused; it is distinguished from "intent" which is the purpose or design with which the act is done. Motive in criminal cases is not always material and its weakness would not damage the credibility of the prosecution case if direct ocular evidence is sufficiently available to prove the guilt of the accused person.[2] Motive is a double edged weapon and cuts both ways,[3] it can be a reason for a person to commit murder, it can equally be reason to falsely implicate a person in the crime.[4] When motive is alleged by the prosecution, it is its duty to prove the same. Failure of prosecution would be fatal.[5] Where a motive is alleged by the prosecution but which not only not proved but completely abandoned at the trial and which is found to be false, it becomes all the more necessary to scrutinize the credentials of the witnesses who by their evidence, direct or indirect speak of about the guilt of an accused person on the premises of a false motive.[6] Though not necessary for prosecution to show motive but once motive is alleged, the same has to be proved,[7] otherwise it will adversely affect the prosecution case.[8] It can be gathered from the absence available on record.[9] Absence or weakness of motive is immaterial for recording of conviction or awarding lesser penalty.[10] Crime can be committed without any motive but once the prosecution alleges a particular motive it is obliged to prove the same through independent evidence.[11] Lack of motive or its weakness is never fatal for prosecution if case otherwise stands proved through direct evidence with regard to occurrence.[12] Once the prosecution sets up a motive, then it is duty bound to prove the same.[13] Motive is only a factor which helps in connecting the accused with the occurrence. Absence of motive cannot be used as a mitigating circumstance in determining sentence to be imposed.[14] Absence of motive or non-setting of any motive cannot be detrimental to the case of the

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1. 2008 PCr.LJ 1407; 2008 PCr.LJ 1716; PLD 2008 SC 503; 2008 MLD 1460; 2008 PCr.LJ 869; 2009 PCr.LJ 681; 2009 YLR 498; 2009 PCr.LJ 394; 2009 YLR 529.
2. 1998 PCr.LJ 530; 2008 SCMR 1352; PLD 2008 Lah. 544; 2008 PCr.LJ 405.
3. PLD 2005 SC 484; 2009 YLR 234; 2008 PCr.LJ 869; 2008 YLR 354; 2008 PCr.LJ 1659; 2009 MLD 629; 2012 MLD 152.
4. 1992 MLD 200.
5. 2018 SCMR 354; 2018 SCMR 918; 2018 SCMR 21; 1992 MLD 200.
6. PLD 1974 Kar. 274.
7. 1992 MLD 182; 2008 YLR 265.
8. 2005 YLR 747.
9. 1992 PCr.LJ 187.
10. 2002 PCr.LJ 894; 2005 PCr.LJ 1939, 1991, 2016; 2008 MLD 1211; 2008 YLR 227; 2008 MLD 806; 2008 YLR 1391.
11. 2002 PCr.LJ 915.
12. 2002 PCr.LJ 1934; 2008 MLD 1246; 2012 PCr.LJ 63.
13. 2003 YLR 761; 2011 YLR 1965.
14. ... 1360

applies.[3]

**Intention.**—The question of intention must be determined in each individual case according to the facts proved and according to accepted general principles.[4] Both according to English Law and the Pakistan Law the drunkenness of an accused person at the time he committed the act charged as an offence may be and should be taken into consideration to decide the question whether he did the act with the intention necessary to constitute the offence charged and the law does not require that the intention which would be ascribed to a sober man in connection with an act must necessarily be ascribed to a drunken man who does the same act.[5]

**Knowledge, intention and motive.**—There may be cases in which a particular intent is an ingredient and other cases in which a particular knowledge is an ingredient. The two are not necessarily always identical.[6] Under section 86, a presumption arises only in respect of knowledge and not in respect of intent. The requisite intent has to be gathered from all the circumstances of the case and not on the basis of the mere presumed knowledge.[7] A distinction must be drawn between motive, intention and knowledge. Motive is something which prompts a man to form an intention, and knowledge is an awareness of the consequences of

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1. AIR 1953 Mad. 827.
2. AIR 1941 Lah. 454; AIR 1932 Lah. 1244; AIR 1929 Lah. 637; AIR 1926 Lah. 232; 9 Cri.L.Jour 156 (Lah.); AIR 1916 Low Bur 114.
3. Air 1953 Mad. 827.
4. Air 1941 Lah. 454; AIR 1934 Rang. 361.
5. AIR 1941 Lah. 454; 13 Cri.L.Jour864; AIR 1957 All. 667.
6. AIR 1942 Pat. 427; 1937 Mad. W.N. 1329.
7. AIR 1951 Orissa 354.

the act. In many cases, intention and knowledge merge into each other and mean the same thing more or less and intention can be presumed from knowledge. The demarcating line between knowledge and intention is no doubt thin, but it is not difficult to perceive that they connote different things.[1] While the first part of the section speaks of intent or knowledge, the latter part deals only with knowledge and a certain element of doubt in interpretation may possibly be felt by reason of this omission. So far as knowledge is concerned the Court must attribute to the intoxicated man the same knowledge as if he was quite sober. But so far as intent or intention is concerned, the Court must gather it from the attending general circumstances of the case paying due regard to the degree of intoxication. Was the man beside his mind altogether for the time being? If so, it would not be possible to fix him with the requisite intention. But if he had not gone so deep in drinking, and from the facts it could be found that he knew what he was about, the Court can apply the rule that a man is presumed to intend the natural consequences of his act or acts.[2]

**Temporary unsoundness of mind.**—The law places insanity and involuntary drunkenness on the same footing by using the same criteria, *viz.*, incapability of "knowing the nature of the act or that he is doing what is either wrong or contrary to law".[3] But temporary unsoundness of mind caused by one bout of drinking or *ganja* smoking which is of such an extremely temporary nature as to pass off a few hours after the consumption of the liquor or drug is not even temporary unsoundness of mind; it is nothing more or less than intoxication, and affords no excuse to the accused unless the intoxication be involuntary.[4]

essence of the exemption is the complete absence of criminal intention or knowledge.

**'Accident'.**—An effect is said to be accidental when the act by which it is caused is not done with the intention of causing it, and when its occurrence as a consequence of such act is not so probable that a person of ordinary prudence ought, under the circumstances in which it is done, to take reasonable precautions against it.[1] An accident is something that happens out of the ordinary course of things.[2]

An injury is said to be accidentally caused whensoever it is neither wilfully nor negligently caused.[3] The idea of something fortuitous and unexpected is involved in the word 'accident'.[4]

Shooting with an unlicensed gun does not debar an accused from claiming immunity under this section.[5]

A big party went for shooting pigs. A bear rushed towards the accused who fired at it, but he missed the bear and the shot hit the leg of a member of the party. It was held that the case was of an accident, but not one of rash or negligent shooting and the accused was acquitted.[6]

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**81.** *Act likely to cause harm, but done without criminal intent, and to prevent other harm.*—Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

*Explanation.*—It is question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

*Illustrations*

(a) A, the captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down a boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat C with only

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1. Stephen's Digest of Criminal, Law, 9th Edn. (1950), Art. 316.
2. (1868) LR 3 CP 313.
3. 10th Part. Rep. 16.
4. 10th Part. Rep. 16.
5. AIR 1952 Nag. 93.
6. [illegible] 1927 Lah. 880; 1931 Lah. 54

two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down C.

(b) A, in a great fire, pulls down houses in order to prevent the conflagration from spreading. He does this with the intention in good faith of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

## COMMENTS

An act which would otherwise be a crime may in some cases be excused if the person accused can show that it was done only in order to avoid consequences which could not otherwise be avoided, and which, if they had followed, would have inflicted upon him or upon others whom he was bound to protect inevitable and irreparable evil, that no more was done than was reasonably necessary for that purpose and that the evil inflicted by it was not disproportionate to the evil avoided.[1]

**Without any criminal intention.**—Under no circumstances can a person be justified in intentionally causing harm; but if he causes the harm without any criminal intention, and merely with the knowledge that it is likely to ensue, he will not be held responsible for the result of his act, provided it be done in good faith to avoid or prevent other harm to person or property.

It is one of the doctrines of Criminal Jurisprudence that no crime is committed unless it is with a criminal intention, in other words action is not an offence if the mind of the person committing the act is innocent. An act is intentional if it exists in idea before it exists in fact, the idea realizing itself in the fact because of the desire by which it is accompanied. Criminal intention which means the purpose or design of doing an act forbidden by the criminal law without just cause or excuse is different from motive for that act.[2] By a motive is meant anything that can contribute to give birth to, or even to prevent, any kind of action. Motive may serve as a clue to the intention; but although the motive be pure, the act done under it may be criminal. Purity of motive will not purge an act of its criminal character.

Where an offence depends upon proof of intention the Court must have proof of facts sufficient to justify it in coming to the conclusion that the intention existed. No doubt one has usually to infer intention from conduct, and

one matter that has to be taken into account is the probable effect of the conduct. But that is never conclusive.[1]

The Penal Code does not make mens rea an essential ingredient of every offence created by it, as there are various sections which define of offences which do not make criminal intention an essential element of the offence and use words like knowledge, voluntariness, dishonest or fraud, etc., to indicate the state of mind giving birth to the offence.

The following kinds of offences are held to be offences wherein criminal intention is not an essential ingredient:--

(1) Cases not criminal in any real sense but which in the public interest are prohibited under a penalty;

(2) public nuisances; and

(3) cases criminal in form but which are really only a summary mode of enforcing a civil right.

Every ingredient of the offence is stated in the definitions.

**'Preventing.....harm to person or property'.**—This is the case in which evil is done to prevent a greater evil. It is to this ground of justification that we must refer the extreme measures which may become necessary on occasions of contageous diseases, seiges, famines, tempests, or shipwrecks. It is a question of fact in each case whether the harm to be avoided was of such a nature as to justify the doing of the act with the knowledge that the act would cause harm.

A Magistrate arresting a person whose conduct was at the time a grave danger to the public is not guilty of any offence.[2]

A military sentry was placed near a fire to guard the property. A chief constable, not in uniform, came to the fire and wished to force his way past the military sentry, who not knowing who he was, kicked him. It was held that the sentry was protected under this section as he acted to prevent greater harm.[3]

**Doctrine of self-preservation.**—The authors of the Code remark:--

"We long considered whether it would be advisabl