

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 22nd April, 2010*
Judgment Pronounced on: 12th May, 2010

+ **CRL.APPEAL No.710/2008**

KALI RAM Appellant
Through: Mr.Tarun Kumar, Advocate for
Mr.Jitendra Kumar, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL.APPEAL No.717/2008

JOGENDER @ PAHALWAN Appellant
Through: Ms.Shraddha Bhargava, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL.APPEAL No.967/2008

HARENDER SINGH & ANR. Appellants
Through: Mr.Ashutosh Bhardwaj, Advocate

versus

STATE Respondent
Through: Ms.Richa Kapoor, Advocate

CRL.APPEAL No.995/2008

NARENDER SINGH Appellant

Through: Mr.Tanveer A.Mir, Advocate

versus

STATE

..... Respondent

Through: Ms.Richa Kapoor, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE SURESH KAIT

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

PRADEEP NANDRAJOG, J.

1. Criminal law was set into motion on 18.07.2000 at about 10.25 PM when Const.Ramji Lal PW-8 recorded DD No.30, Ex.PW-8/A, that at 10.05 PM a wireless information has been received that a guard on duty in a workshop at 235 Okhla Phase-III has been shot by an unknown person.

2. A copy of DD entry Ex.PW-8/A being handed over to him, Inspector Sunil Kumar PW-29, accompanied by SI Satish PW-22, HC Krishan Pal PW-4, Const.Samarpal PW-9 and Const.Khemraj PW-19 proceeded to the workshop where he met Radhey Shyam PW-12, who was injured and informed him that one Krishanveer Rathi, employed in the workshop had

fired a shot at him. In the meantime, a PCR van reached the workshop and removed Radhey Shyam to All India Institute of Medical Sciences.

3. The premises in question was a workshop-cum-showroom from where automobiles manufactured by 'Ford' were sold. On entering the showroom, the police officers saw Rishipal lying dead in the courtyard and Aslam Khan and Muneshwar lying dead in the power room. Leaving behind the constables to guard the place of the crime, Inspector Sunil Kumar went to AIIMS where he submitted an application Ex.PW-29/A to the doctor concerned for recording the statement of Radhey Shyam but could not do so as Radhey Shyam was not fit for statement and hence Inspector Sunil returned to the place of the crime. He made an endorsement Ex.PW-29/B beneath DD entry Ex.PW-8/A and at around 12.30 AM recording the date 19.07.2000 handed over the same to HC Krishan Pal PW-4 for FIR to be registered. At the police station HC Megh Raj PW-2 registered FIR No.401/2000, Ex.PW-2/A.

4. In the meantime, ACP V.K. Malhotra PW-33, reached the spot and took over the investigation. He summoned the crime team.

5. The crime team consisting of, amongst others, Const. Ram Avtar PW-3, a photographer and Chet Ram PW-5, a Finger

Print Expert reached the spot. Chet Ram PW-5 inspected the car found parked near the main gate of the showroom and lifted seven chance prints thereon as recorded in his report Ex.PW-5/A. Const.Ram Avtar PW-3, took the photographs Ex.P4/1 to Ex.P4/23; negatives whereof are Ex.P3/1 to Ex.P3/25.

6. Inside the Ford Ikon car parked near the main gate of the showroom from which Chet Ram PW-5 lifted the chance prints, ACP V.K.Malhotra saw a blood-stained polythene and a plastic bag containing a kurta, a pyjama and a vest were lying and he seized the same vide memo Ex.PW-10/D. He saw broken blood-stained glass pieces lying scattered on the accountant's room on the first floor of the showroom and he seized the same vide memo Ex.PW-10/P. He saw a blood stained handkerchief lying on the reception table kept in the hall of the showroom and seized the same vide memo Ex.PW-10/C. He saw an empty cartridge lying on the coffee counter in the showroom and an empty cartridge lying on the ground near the coffee counter and seized both vide memo Ex.PW-10/E. He saw an empty cartridge and one bullet lead lying in the courtyard where Rishi Pal was lying dead and he seized the same vide memo Ex.PW-10/G. He saw an empty cartridge and a bullet in the power room where Aslam and Muneshwar were lying dead and he

seized the same vide memos Ex.PW-10/J and Ex.PW-10/Q respectively. He prepared the rough site plan Ex.PW-3/C of the place of occurrence. He seized the dead bodies of Rishipal, Aslam Khan and Muneshwar and sent the same to the mortuary of AIIMS for post-mortem.

7. On 19.07.2000 Const.Khem Raj PW-14 went to AIIMS and collected the clothes worn by Radhey Shyam at the time of the occurrence and handed over the same to ACP V.K.Malhotra vide memo Ex.PW-14/A.

8. On 20.07.2000 at about 12.25 PM Dr.T.Millo PW-6, conducted the post-mortem on the dead body of Aslam and prepared his report Ex.PW-6/A which records that a firearm injury was found on the occipital region of skull of Aslam and that the said wound was sufficient to cause death of Aslam in the ordinary course of nature. After the post-mortem, the doctor handed over the clothes and the blood sample of Aslam on a gauze, by making separate parcels of the clothes and the blood sample, to Const.Samarpal Singh PW-9, who in turn handed over the same to ACP V.K.Malhotra vide memo Ex.PW-9/A.

9. On 20.07.2000 at about 12.30 PM Dr.Chitranjan Behra PW-25 conducted the post-mortem on the dead body of Rishipal and prepared his report Ex.PW-25/A which records

that a firearm injury was found on the occipital region of the skull of Rishipal; that the said injury was sufficient to cause death of Rishipal in ordinary course of nature and that bullet and pieces of bullet were found in the body of Rishipal. After the post-mortem, the doctor handed over the clothes and the blood sample of Rishipal on a gauze as also the bullet and pieces of bullet found in the body of Rishipal, by making separate parcels of the clothes, the bullet pieces and the blood sample, to Const.Khemraj PW-14, who in turn handed over the same to ACP V.K.Malhotra vide memo Ex.PW-14/B.

10. On 21.07.2000 at about 12.10 P.M. Dr.Sudhir Gupta PW-27, conducted the post-mortem of Muneshwar and prepared his report Ex.PW-27/A which records that a firearm injury was found near the right ear of Muneshwar and that the said injury was sufficient to cause death of Muneshwar in the ordinary course of nature. After the post-mortem, the doctor handed over the clothes and the blood sample of Muneshwar on a gauze, by making separate parcels of the clothes and the blood sample, to Const.Veer Singh.

11. In view of the fact that Radhey Shyam had told Inspector Sunil Kumar that Krishanveer Rathi who was employed in the showroom had fired, it was apparent that further breakthrough

could be achieved only after Krishanveer Rathi was in the police net.

12. On 23.07.2000 a police team consisting of Inspector Sunil Kumar PW-29, HC Krishan Pal PW-4 and ASI Vijender PW-21 arrested accused Krishnaveer Singh from village Tikri, Uttar Pradesh as recorded in the arrest memo Ex.PW-21/A. On being interrogated by Inspector Sunil Kumar PW-29, in the presence of HC Krishan Pal PW-4 and ASI Vijender PW-21, accused Krishnaveer Singh made a disclosure statement Ex.PW-21/C wherein he stated that he, Sunil, Harender and Narender hatched a conspiracy to commit robbery in the showroom in question pursuant to which he and his aforesaid associates committed robbery in the showroom in the night of 18.07.2000 and also murdered Aslam, Rishipal and Muneshwar during the course of commission of said robbery; that the hand of Harender got hurt by a broken glass piece during the course of commission of robbery and that Harender used a handkerchief to wipe the blood oozing out of his hand and left the said handkerchief in the showroom in question; that he and the aforesaid persons looted a cash box containing a sum of Rs.75,080/- and a Ford Ikon car bearing registration No.DL-3C-Q-4257 from the showroom in question; that he had handed over a sum of Rs.30,000/- looted by him and his associates to

his father Kaliram; that he asked his cousin brother Jogender to take the country made pistol used by him and his associates in the crime from Narender as also sum of Rs.30,000/- lying in the car looted by them and that he can get recovered the country made pistol used by him in the crime and can point out the spot where the cash box looted by him and his associates from the showroom was thrown; that his three associates along with the car were at the bhatta of Sunil and he can get them arrested. Pursuant thereto, accused Krishnaveer Singh got recovered a country made pistol lying hidden in the heap of grass lying in his house which was seized vide memo Ex.PW-21/D.

13. Thereafter Inspector Sunil Kumar PW-29, HC Krishan Pal PW-4 and ASI Vijender PW-21, went to the parking at Ganesh Ghat, Haridwar and found Ford Ikon car bearing registration No.DL-3C-Q-4257 stationed there. (Why they went with accused to Haridwar is not clear for the reason, as noted above, in the disclosure statement Ex.PW-21/C Krishanveer has disclosed that the car was with the three accused and they were at the bhatta [brick kiln] of Sunil. It is not recorded that Krishanveer disclosed that the car was in Haridwar.) After sometime, accused Harender came near the car in question and was arrested by the aforesaid police officers. On being

interrogated by Inspector Sunil Kumar PW-29, in the presence of HC Krishan Pal PW-4 and ASI Vijender PW-21, accused Harender made a disclosure statement Ex.PW-21/H3 wherein he admitted his involvement in the crime in question. Inspector Sunil Kumar PW-29, seized the car in question vide memo Ex.PW-21/D.

14. On 24.07.2000 the police took accused Harender to AIIMS Hospital where Dr.Amar Natha examined him and prepared his MLC Ex.PW-20/A which records that a cut injury and abrasions were found on the right palm of accused Harender. After conduct of the medical examination, the doctor handed over the blood sample of accused Harender on a gauze kept inside a bottle to Const.Jai Kumar PW-17, who in turn handed over the same to ASI Rajbala PW-13, vide memo Ex.PW-13/A.

15. On 25.07.2000 accused Krishnaveer Singh led ACP V.K.Malhotra PW-33, Inspector Sunil Kumar PW-29 and HC Krishan Pal PW-4, to a bridge at river Krishna and got recovered a cash box from underneath the river and the same was seized vide memo Ex.PW-29/E. Thereafter accused Krishnaveer led the aforesaid police officers to his residence wherefrom accused Kaliram was arrested. On being interrogated by ACP V.K.Malhotra PW-33, in the presence of Inspector Sunil Kumar PW-29 and HC Krishan Pal PW-4,

accused Kaliram made his disclosure statement Ex.PW-4/A wherein he stated that he had taken a sum of Rs.30,000/- from his son Krishnaveer Singh despite having clear knowledge of the fact that the said money is the fruit of a crime committed by Krishnaveer Singh and his associates and that he can get recover Rs.22,000/- out of the said sum of Rs.30,000/-. Pursuant thereto, he led the aforesaid persons to a room in his house and got recovered a sum of Rs.22,000/- lying buried in the floor of the said room and the same were seized vide memo Ex.PW-4/B.

16. Thereafter accused Krishnaveer Singh led the aforesaid police officers to the residence of accused Jogender wherefrom accused Jogender was arrested. On being interrogated by ACP V.K.Malhotra PW-33, in the presence of Inspector Sunil Kumar PW-29 and HC Krishan Pal PW-4, accused Jogender made his disclosure statement Ex.PW-4/C wherein he stated that he had taken a country made pistol and a sum of Rs.30,000/- from Ford Ikon car bearing registration No.DL-3C-Q-4257 despite having clear knowledge of the facts that the said pistol was used by accused Krishnaveer Singh and his associates in commission of a crime and that the said money and car are the fruits of the crime committed by them. Pursuant thereto, accused Jogender led the aforesaid police officers to his

residence and got recovered a country made pistol, three live cartridges and a sum of Rs.10,000/- kept in an 'ala' in a wall of a room of his house and the same were seized vide memo Ex.PW-4/D.

17. On 12.01.2001 accused Narender was arrested by the police. Upon his arrest, accused Narender made a disclosure statement Ex.PW-29/J wherein he admitted his involvement in the crime in question and stated that he can get recovered a stereo and speakers installed in Ford Ikon car bearing registration No.DL-3C-Q-4257 looted by him and his associates. Pursuant thereto, accused Narender got recovered a car stereo and two speakers from his house and the same were seized vide memo Ex.PW-29/K.

18. On 09.07.2003 Inspector Neeraj Kumar PW-32, arrested accused Sunil as recorded in the arrest memo Ex.PW-32/A. We need not note the contents of the confessional statement of accused Sunil as the same is completely inadmissible in evidence as it admits of guilt. We note that neither any recovery was effected nor was a fact discovered pursuant to the confessional statement made by accused Sunil.

19. The seven chance prints found on the Ikon car parked near the main gate of the showroom in question on the day of occurrence and the specimen finger prints of accused

Krishnaveer Singh and Harender were sent to Forensic Science Laboratory for comparison. Vide FSL report Ex.PW-5/B it was opined that two chance prints detected on the car were smudged and thus cannot be compared with the specimen finger prints of the accused; that two chance prints detected on the car are palm prints and that the specimen of the palm prints of the accused were not sent to the bureau due to which no comparison could be made with respect to said chance prints and that remaining three chance prints detected on the car do not match with the specimen finger prints of the accused.

20. The seized materials i.e. polythene and plastic bag found in the car parked near the main gate of the showroom on the day of the occurrence as also the kurta, pyjama and the vest contained in the said bag; broken glass pieces found in the accountant's room of the showroom in question; handkerchief found on the reception table kept in the showroom; the clothes worn by Radhey Shyam at the time of occurrence; the clothes and the blood sample of Aslam, Rishipal and Muneshwar and the blood sample of Harender were sent to Forensic Science Laboratory for serological examination. Vide FSL reports dated 31.07.2001 it was opined that human blood of AB group was detected on the handkerchief found on the reception table

kept in the showroom; human blood of group A was detected on the polythene lying in the car parked near the main gate of the showroom on the day of the occurrence; that human blood of AB group was detected on the broken glass pieces kept in the accountant room of the showroom; human blood of AB group was detected on the clothes worn by Radhey Shyam at the time of occurrence; that blood group of Aslam was AB; that human blood of AB group was detected on the clothes worn by Aslam at the time of occurrence; that blood group of Rishipal and Muneshwar was A; that human blood of A group was detected on the clothes worn by Rishipal and Muneshwar at the time of the occurrence and that blood group of Harender was A.

21. Since the learned Trial Judge has held that the blood group of Harender is AB and that blood of same group was detected on the handkerchief lifted from the scene of the crime, it needs to be noted that the FSL report shows 22 exhibits being subjected to serological test. Four exhibits being sealed paper envelope Ex.14, sealed paper envelope Ex.17, sealed paper envelope Ex.19, sealed bottle Ex.22 contained blood samples. All of them were detected as having human blood. Blood of Group A was detected on the gauze piece Ex.14 and the gauze piece Ex.19. The blood group on

the gauze piece Ex.22 i.e. the gauze piece sent in the bottle was of group AB. The maalkhana register Ex.PW-24/A consisting of 12 pages shows that whereas three gauze containing blood samples of Aslam, Rishipal and Muneshwar were received in the maalkhana on the 20th and 21st of July 2000 and while making entry in the register it was recorded that they are in an envelope, the blood sample of Harender taken on a gauze and kept in a bottle by Dr.Amarnath on 24.7.2000 was shown received in the maalkhana on 24.7.2000 and the entry clearly records that the blood sample on a gauze received in the maalkhana is in a bottle. It is thus apparent that with reference to the report of the serologist the blood group of Ex.22 was group A and this exhibit pertain to the blood sample of Harender and thus Harender's blood could not be on the handkerchief which was in parcel 1 and was given Ex.1 in the FSL report by describing the same as a dirty handkerchief for human blood of group AB was detected on the said handkerchief.

22. The two empty cartridges found on/near the coffee counter in the showroom in question; one empty cartridge and bullet lead found in the courtyard of the showroom where dead body of Rishipal was found; one empty cartridge and bullet found in the power room of the showroom in question where

dead bodies of Aslam and Muneshwar were found; bullet and bullet pieces found in the body of Rishipal; one country made pistol recovered at the instance of accused Krishnaveer Singh and one country made pistol and three live cartridges recovered at the instance of accused Jogender were sent to ballistic division of Forensic Science Laboratory. Vide FSL report Ex.PW-33/F it was opined that the country made pistol recovered at the instance of accused Krishnaveer Singh is in working order and is designed to fire a standard 8mm/.315" bore cartridge; that the country made pistol recovered at the instance of accused Jogender is in working order and is designed to fire a standard 7.65 mm cartridge; that the three live cartridges recovered at the instance of accused Jogender are live ones and can be fired through 7.65 mm calibre firearm; that the bullets found in the power room and the body of Rishipal respectively correspond to bullet of 8mm/.315" bore cartridge and has been fired through a country made pistol; that the empty cartridge found on the coffee table and the bullet lead found in the courtyard of the showroom has been fired through the country made pistol recovered at the instance of accused Jogender; that the empty cartridges found near the coffee table and courtyard of the showroom were not fired through the country made pistol recovered at the instance of accused Krishnaveer Singh and that no opinion

could be given regarding the fact that whether the bullets found in the power room and the body of Rishipal were fired through the country made pistol recovered at the instance of accused Krishnaveer Singh.

23. Six persons were sent for trial being Sunil, Narender Singh, Krishanveer Singh, Harender Singh, Jogender and Kaliram. Charges under Sections 120-B, 302, 307 and 397 and 120-B IPC were framed against accused Krishnaveer Singh, Harender, Narender and Sunil for having hatched a conspiracy to commit a robbery at the showroom in question and having murdered Rishipal, Aslam and Muneshwar; attempted to murder Radhey Shyam and committed robbery by using a deadly weapon in pursuance of the said conspiracy. Charges under Section 411 IPC were framed against accused Krishnaveer Singh, Harender, Kali Ram and Jogender for having dishonestly retained stolen property. Charges under Section 27 Arms Act were framed against accused Krishnaveer Singh and Harender for having possessed a firearm in contravention of Section 5 of Arms Act.

24. At the trial, the prosecution examined 33 witnesses.

25. We need not note the testimony of the various police officials who participated in the investigation for they have deposed regarding the respective role played by them in the

investigation which has already been stated by us in the preceding paras.

26. Navin Kohli PW-7, deposed that he is the owner of the showroom in question and the workshop at 235, Okhla Phase-III, Delhi. On 19.07.2000 one police official named Sunil Mittal informed him that a robbery has been committed in his showroom. On reaching the showroom, he was informed that a cash box containing a sum of Rs.72,080/- and a car bearing registration No. DL-3C-Q-4257 has been looted by the dacoits and that three persons are lying dead inside the showroom. It is significant to note here that the cash box, car stereo and two speakers recovered at the instance of accused Krishnaveer Singh and Sunil respectively were not shown to the witness and thus he did not identify the said exhibits as either stolen from his showroom or removed from his car.

27. Anoop Singh PW-10, deposed that he is running a security agency under the name and style of A+ Security Services. In the intervening night of 18/19.07.2000 he was present in his house when Naveen Kohli, the owner of the showroom in question, rang him up and told him to immediately come to the showroom in question. On reaching the showroom, he saw that Rishipal, Muneshwar and a third person were lying dead in the showroom. Rishipal and

Muneshwar were employed as security guards in his agency, that he had deployed them at the showroom in question and that their duty hours were from 10 P.M. to 06.00 A.M. He came to know that the third person who was lying dead was the driver of the owner of the showroom. He was informed by the police that another security guard named Radhey Shyam has also received injuries. Accused Krishnaveer Singh was also employed as a security guard in his agency and was deployed by him at the showroom in question prior to the day of occurrence but he had terminated the services of Krishnaveer Singh as his conduct was not satisfactory. The forms filled by Rishipal, Radhey Shyam, Muneshwar and accused Krishnaveer Singh in connection with their employment in his agency are Ex.PW-10/B-1, Ex.PW-10/B-2, Ex.PW-10/B-3 and Ex.PW-10/B-4 respectively.

28. Radhey Shyam PW-12, deposed that on 18.07.2000 he was employed as a security guard in A+ Security Services and that his employer had deployed him at the showroom in question on the said day. At about 09.30 P.M. he was present in the showroom in question when suddenly someone fired a shot at him from his back. Thereafter he became unconscious and that someone removed him to AIIMS Hospital. He has no

knowledge about the identity of the person who fired a shot at him.

29. Relevant would it be to note that Radhey Shyam did not state that accused Krishanveer Singh had shot at him.

30. In their examination under Section 313 Cr.P.C. the accused denied virtually everything and pleaded false implication. It may be noted here that accused Harender admitted that he was medically examined by a doctor in AIIMS Hospital on 24.07.2000 and that the MLC Ex.PW-20/A was prepared by the doctor in said regard in his examination under Section 313 Cr.P.C.

31. In defence accused Kali Ram examined one Angrej Singh DW-1, who deposed that accused Kali Ram was his neighbour and that he paid Rs.50,000/- to Kali Ram in the year 2000.

32. The other accused did not lead any defence evidence.

33. Vide impugned judgment and order dated 15.07.2008, save and except acquitting accused Sunil, the learned Trial Judge convicted all the accused for the offences they were charged of.

34. With respect to accused Krishnaveer Singh, the circumstance used by the learned Trial Judge to infer his guilt

was that the cash box and the car looted from the showroom in question were recovered at his instance.

35. With respect to accused Harender, following two circumstances have been used by the learned Trial Judge to infer his guilt:- (i) the fact that accused Harender came near the car looted from the showroom in question when the car was recovered at the parking at Ganesh Ghat, Haridwar shows that he was aware about the location of the said car which in turn establishes that he was a party to the conspiracy to commit robbery in the showroom; and (ii) that his MLC Ex.PW-20/A shows a cut on the right palm and his blood group was AB and the same was the group of the blood found on the handkerchief lifted from the showroom on the day of the crime. It was held that it showed that Harender was in the showroom and had used the handkerchief to either wipe the blood which was oozing from his palm or to arrest the blood flow.

36. With respect to accused Narender, the circumstance used by the learned Trial Judge to infer his guilt was that the stereo and the speakers installed in the car looted from the showroom in question were recovered at his instance.

37. With respect to accused Kali Ram and Jogender, it has been held by the learned Trial Judge that the fact that a sum of

Rs.22,000/- and Rs.10,000/- were concealed by Kali Ram and Jogender respectively establishes that Kali Ram and Jogender were aware about the fact that said money was looted money.

38. With respect to accused Sunil, it has been held by the learned Trial Judge that there is not even a single piece of evidence which could connect accused Sunil with the crime with which he is charged.

LAW OF CONSPIRACY

39. As conspiracy is the primary charge against the accused, we first advert to the law of conspiracy – its definition, essential features and proof.

40. Section 120-A defines ‘criminal conspiracy’ as under:-

“Definition of criminal conspiracy - When two or more person agree 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 except 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.”

41. Proof of a criminal conspiracy by direct evidence is not easy to get and probably for this reason Section 10 of the Indian Evidence Act was enacted. It reads as under:-

"10. Things said or done by conspirator in reference to common design:-Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

42. Thus, the substantive section of the IPC i.e. Section 120-A adumbrated thereon Section 10 of the Indian Evidence Act give us the legislative provisions applicable to conspiracy and its proof.

43. A conspiracy is a march under a banner. The very agreement, concert or league is the ingredient, of the offence like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). From the definition of conspiracy in Section 120-A, it is evident that the agreement constitutes the act and the intention to achieve unlawful object constitutes the mental state. All conspirators are liable for the crimes committed in furtherance of the conspiracy besides being liable for committing an offence of conspiracy itself. Pertaining to conspiracy, law punishes conduct that threatens to produce the harm as well as the conduct that actually produces the harm. In this, lies the difference between the

offence of conspiracy and general penal offences. In case of general offences, attempt to commit a crime merges when the crime is completed but in case of conspiracy, punishment is for both, the conspiracy and the completed crime. This distinctiveness of the offence of conspiracy makes all conspirators as agents of each other. Conspiracy, therefore, criminalizes the agreement to commit a crime. Inherently, conspiracy is a clandestine activity. Its covenants are not formed openly. It has to be inferred from circumstantial evidence of co-operation.

44. If conspiracies are hatched in the darkness of secrecy and direct evidence is seldom forthcoming and if the offence is to be proved in relation to the acts, deeds or things done by the co-conspirators, the question would arise as to what is the nature of these acts, deeds or things. Is merely moving around together or seen in each other's company sufficient? If not, what more should be there from which it could be inferred that the conspirators were acting to achieve the desired offence in furtherance of a crime.

45. In the decision reported as State of Maharashtra & Ors. v. Som Nath Thapa & Ors. (1996) 4 SCC 659 illuminating on this grey area, the Supreme Court observed that for a person to conspire with another, he must have knowledge of what the

co-conspirators were wanting to achieve and thereafter having the intent to further the illegal act takes recourse to a course of conduct to achieve the illegal end or facilitate its accomplishment. Except for extreme cases, intent could be inferred from knowledge for example whether a person was found in possession of an offending article, no legitimate use of which could be done by the offender. To illustrate, a person is found in possession of 100 Kg. of RDX, is proved to be visiting or visited by "A" against whom there is a charge of conspiring to blow up a public place. Here, the recovery of the offending article would be enough to infer a charge of conspiracy. However, such instances apart, it was held that law would require something more. This something more would be a step from knowledge to intent. This was to be evidenced from informed and interested cooperation, simulation and instigation. The following passage from People v. Lauria 251, California APP 2 (d) 471 was cited.

"All articles of commerce may be put to illegal ends,.... but all do not have inherently the same susceptibility to harmful and illegal use....This different is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use. The other is to show that by the same he intends to further promote and cooperate in it. This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another proposes unlawful action, it is not unrelated to such

knowledge..... The step from knowledge to intent and agreement may be taken. There is more than suspicion, more than knowledge, acquiescence, carelessness, indifferent, lack of concern. There is informed and interested cooperation, simulation, instigation."

46. To elucidate further, it is most apposite to quote following observations of Supreme Court in the decision reported as Kehar Singh v State (Delhi Administration) AIR 1988 SC 1883:-

"Generally, a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The prosecution will often rely on evidence of acts of various parties to infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial. But the Court must enquire whether the two persons are independently pursuing the same and or they have come together to the pursuit of the unlawful object. The former does not render them conspirators, but the latter is. It is, however, essential that the offence of conspiracy requires some kind of physical manifestation of agreement. The express agreement, however, need not be proved. Nor actual meeting of two persons is necessary. Nor it is necessary to prove the actual words of communication. The evidence as to transmission of thoughts sharing the unlawful design may be sufficient. Gerald Orchard of University of Canterbury, New Zealand 1974 C L R 297 explains the limited nature of this proposition:

Although it is not in doubt that the offence requires some physical manifestation of agreement, it is important to note the limited nature of this proposition. The law does not require that the act of agreement take

any particular form and the fact of agreement may be communicated by words or conduct. Thus, it has been said that it is unnecessary to prove that the parties "actually came together" and agreed in terms" to pursue the unlawful object; there need ever have been an express verbal agreement, it being sufficient that there was "a tacit understanding between conspirators as to what should be done.

I share this opinion, but hasten to add that the relative acts or conduct of the parties must be conscientious and clear to mark their concurrence as to what should be done. The concurrence cannot be inferred by a group of irrelevant facts artfully arranged so as to give an appearance of coherence. The innocuous, innocent or inadvertent events and incidents should not enter the judicial verdict. We must thus be strictly on our guard.

47. Since more often than not, conspiracy would be proved on circumstantial evidence, four fundamental requirements as laid down as far back as in 1881 in the judgment reported 60 years later at the suggestion of Rt. Hon'ble Sir Tej Bahadur Sapru i.e. 1941 All ALJR 416, *Queen Empress v. Hoshhak* may be re-emphasized:-

- I. That the circumstances from which the conclusion is drawn be fully established;
- II. That all the facts should be consistent with the hypothesis of guilt;
- III. That the circumstances should be of a conclusive nature and tendency;

IV. That the circumstances should, by a moral certainty, actually exclude every hypothesis but the one proposed to be proved;

48. The discussion pertaining to standard of proof required for proving the offence of conspiracy can be summarized by the following observations of Supreme Court in the decision reported as State (NCT of Delhi) v Navjot Sandhu AIR 2005 SC 3820:-

“A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused in the offence of criminal conspiracy. (Emphasis Supplied)

CASE AGAINST ACCUSED HARENDER

49. As already noted hereinabove, the first circumstance used by the learned Trial Judge to infer the guilt of accused Harender was that accused Harender came near the Ford Ikon car looted from the showroom in question. According to the learned Trial Judge, the said fact shows that accused Harender was aware of the whereabouts of the car in question after it was looted from the showroom in question which in turn establishes that accused Harender was a party to the conspiracy to commit robbery at the showroom in question.

50. We fail to understand the logic behind the aforesaid finding of the learned Trial Judge. The fact that a person came near a stolen car does not lead to the conclusion that he participated in the crime of theft/robbery of the said car. Further, the car in question was found parked in an open public parking at Haridwar and any person could have innocently walked up to the car. The police officers who have proved the recovery of the car have not deposed that Harender was inside the car or was doing anything to the car. They have simply deposed that when they reached the parking and saw the car they also saw Harender nearby.

51. The next circumstance used by the learned Trial Judge to infer the guilt of accused Harender is that human blood of group AB which was the blood group of accused Harender was also detected on the handkerchief lifted from the scene of the crime and the twin fact of Harender having a cut injury on his right palm and blood of his group found on the handkerchief were incriminating evidence.

52. This finding is clearly wrong and it is apparent that the learned Trial Judge has not bothered to carefully peruse the report of the serologist and as has been noted by us in para 21 above which clearly shows that Harender's blood group was A and not AB. It is apparent that the learned Trial Judge has

simply noted that out of four blood samples sent since one of them had blood of group AB thereon and there from simply concluded, without any analysis, that this was the blood group of Harender.

53. This is probably for the third time we are detecting such errors. We have repeatedly emphasized that reports of serologist need to be connected with the various recovery memos when blood samples or blood stained exhibits are lifted from time to time and with reference to the seal of the investigating officer or the agency sealing the same and the description of the exhibit, it being within a parcel, envelope or a bottle, the same has to be interlinked and then distinctly noted with accuracy as to what got detected where and on what.

CASE AGAINST ACCUSED KRISHNAVEER SINGH

54. As already noted hereinabove, the circumstance used by the learned Trial Judge to convict accused Krishnaveer Singh was that the cash box and Ford Ikon car looted from the showroom in question were recovered at the instance of accused Krishnaveer Singh.

55. Pertaining to the car being recovered at the instance of Krishanveer Singh, as noted in para 13 herein above, in his

disclosure statement Krishanveer Singh has nowhere stated that the car was lying parked at Ganesh Ghat, Haridwar. None of the police officers associated with the recovery i.e. Insp.Sunil Mittal PW-29 and ASI Vijender Singh PW-21 have deposed that Krishanveer led them to the parking and pointed out the car or the spot where it was found. In fact ASI Vijender Singh has spoken not a word about Krishanveer's presence when the car was recovered. Insp.Sunil Mittal has simply said that when the police was with Krishanveer Singh at Ganesh Ghat, the car was recovered.

56. Pertaining to the cash box got recovered by Krishanveer Singh, in the absence of any witness identifying the same as the one which was stolen has rendered said recovery meaningless and nothing incriminating remains in the same.

57. However, in view of the testimony of the police officials it does stand proved that a country made pistol was recovered at the instance of accused Krishnaveer Singh. The aforesaid police officials deposed that accused Krishnaveer Singh got recovered a country made pistol lying hidden in the heap of grass lying in his house. The aforesaid police officials were cross-examined at length but nothing tangible could be elicited therefrom which could cast a doubt on their evidence

pertaining to recovery of a country made pistol at the instance of accused Krishnaveer Singh.

58. It is true that Krishanveer Singh has disclosed that Harender has an injury on his palm, which knowledge of Krishanveer has been found to be correct for indeed Harender had an injury on his palm, but since Krishanveer and Harender are friends it is possible that the source of this knowledge was when the two met. Since the group of the blood found on the handkerchief lifted from the scene of the crime is AB and blood group of Harender is A, linking Harender to the scene of the crime through the medium of the handkerchief is impermissible and thus linking Krishanveer to the scene of the crime as the extension of said reasoning through the medium of the handkerchief and the injury is equally impermissible.

CASE AGAINST ACCUSED NARENDER

59. The solitary circumstance used by the learned Trial Judge to infer the guilt of accused Narender is that he got recovered the stereo and speakers installed in the car looted from the showroom in question.

60. A perusal of the evidence led by the prosecution shows that none of the witnesses of the prosecution has deposed having witnessed the recovery of the stereo and the speakers

in question at the instance of accused Narender. The only witness who has stated a word about the recovery in question is ASI Vijender PW-21, who has merely deposed that the stereo and speakers in question were recovered from the house of accused Narender at his instance. ASI Vijender PW-21, has not deposed that the stereo and speakers in question were got recovered by accused Narender from his house in his presence. The same are even otherwise ordinary objects and there is no evidence of the same having any distinct identity marks. The same were not even put up for any TIP.

CASE AGAINST ACCUSED KALI RAM

61. There is no evidence to show that sum of Rs.22,000/- recovered at the instance of Kali Ram was the money which was looted from the showroom in question. The only incriminating circumstance against accused Kali Ram is that the said sum of Rs.22,000/- was found buried in the floor of a room in his house.

CASE AGAINST ACCUSED JOGENDER

62. With respect to recovery of Rs.10,000/- at the instance of accused Jogender, again there is no evidence to show that the said sum was the money which was looted from the showroom in question. With respect to recovery of country made pistol at

the instance of accused Jogender, no evidence has been led by the prosecution to show that the house wherefrom said pistol was recovered was in the exclusive possession of accused Jogender. The pistol was got recovered by accused Jogender from an ala in the wall of his house. But, there is no evidence to show that the house wherefrom the pistol was got recovered by accused Jogender was in his exclusive possession. There is no evidence that the pistol was found hidden or was not “ordinarily visible”.

CONCLUSION

63. Thus, we have no evidence whatsoever interlinking any of the accused save and except Krishanveer Singh's knowledge that Harender was having an injury on his right palm. There is no evidence of the accused meeting each other. There is just no evidence to establish any conspiracy.

64. The evidence against accused Harender, as discussed in paras 49 to 53 above brings out no incriminating evidence against him and that his right palm had a cut being rendered meaningless inasmuch as Harender's blood group is A and blood group detected on the handkerchief recovered from the scene of the crime is AB, the inevitable conclusion is that Harender has to be acquitted.

65. As against accused Krishanveer the only evidence which is incriminating against him pertains to the recovery of the country made pistol at his instance and for which offence his conviction for the offence punishable under Section 27 of the Arms Act has to be sustained. For the reasons noted in paras 54 to 56 above the other link evidence has failed to attain incriminating status and hence Krishanveer's Appeal has to succeed save and except his conviction of the offence under Section 27 of the Arms Act.

66. For the reasons stated in paras 59 to 61 above accused Narender and Kali Ram are entitled to the benefit of doubt and for the reasons stated in para 62 above Jogender is entitled to be acquitted.

67. The net result of the above conclusion is that Appeals filed by Harender, Jogender, Narender and Kali Ram are allowed. They are acquitted of all the charges framed against them. Accused Krishanveer is acquitted of all the charges framed against him save and except for the offence punishable under Section 27 of the Arms Act and for which offence the sentence imposed against him is maintained. Sentence imposed upon him for other offences are set aside.

68. In view of the above findings, noting that Kali Ram and Jogender have been admitted to bail pending hearing of their

appeals, the bail bonds and surety bonds furnished by them are discharged. Noting that Harender, Krishanveer and Narender are in jail and noting that Krishanveer has remained in prison for a period in excess of the sentence imposed upon him we direct that they be released forthwith unless required in custody in some other case.

69. Three copies of the instant decision pertaining to the appeals filed by Harender, Krishanveer and Narender be sent by the Registry to the Superintendent, Central Jail Tihar for compliance.

(PRADEEP NANDRAJOG)
JUDGE

(SURESH KAIT)
JUDGE

MAY 12, 2010
mm / dk