

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

(1) CRA-D-297-DB of 2010

Anil Kumar and another APPELLANTS

Versus

State of Haryana RESPONDENT

(2) CRA-D-379-DB of 2010

Ajit Singh APPELLANT

Versus

State of Haryana RESPONDENT

(3) CRA-D-500-DB of 2010

Sandeep Kumar @ Patliya APPELLANT

Versus

State of Haryana RESPONDENT

(4) CRA-D-561-DB of 2010

Anup alias Kirori APPELLANT

Versus

State of Haryana RESPONDENT

Reserved on : 14.01.2019

Date of decision : 01.02.2019

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Vinod Ghai, Senior Advocate, with
Mr. Amit Singh Kang, Advocate,
for the appellants
in CRA-D-297-DB of 2010 and CRA-D-561-DB of 2010.

Mr. Rajinder Mathur, Advocate, Legal Aid Counsel,
for the appellant in CRA-D-500-DB of 2010.

Mr. S.S. Mor, Advocate,
for the appellant in CRA-D-379-DB of 2010.

Ms. Shubhra Singh, Addl. A.G., Haryana.

Mr. Sudhir Kashyap, Advocate, for
Mr. Gaurav Mohunta, Advocate,
for the complainant.

RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in four appeals, CRA-D-297-DB of 2010, CRA-D-379-DB of 2010, CRA-D-500-DB of 2010 and CRA-D-561-DB of 2010, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against judgment dated 06.03.2010 and order dated 09.03.2010, rendered by learned Sessions Judge, Bhiwani, in Sessions Trial No. 19 dated 04.02.2009, whereby the appellants who were charged with and tried for the offences punishable under Sections 302, 120-B and 506 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC” for brevity sake) and appellant Sandeep alias Patliya was additionally charged with and tried for the offence punishable under and Section 25 (1B) (a) of the Arms Act as well, were convicted and sentenced to undergo imprisonment for life and to pay fine of ₹ 20,000/- each under Section 302 IPC, and in default of payment of fine to further undergo rigorous imprisonment for three years. They were also convicted and sentenced to undergo rigorous imprisonment for a period of seven years and

to pay fine of ₹ 10,000/- each under Section 120-B IPC, and in default of payment of fine to further undergo rigorous imprisonment for one year. Appellant Sandeep alias Patliya was also sentenced to undergo rigorous imprisonment for two years and to pay fine of ₹ 5,000/- under Section 506 IPC, and in default of payment of fine to further undergo rigorous imprisonment for six months. Appellant Sandeep alias Patliya was also sentenced to undergo rigorous imprisonment for one year and to pay fine of ₹ 5,000/- under Section 25 (1B) (a) of the Indian Arms Act, 1959, and in default of payment of fine to further undergo rigorous imprisonment for two months. All the substantive sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that PW.1 Jasbir Singh lodged the report Ex.P1 on 22.09.2008 to the effect that he was running chemist shop under the name and style of Health Pharma Medicos in Chaudhary Nursing Home of his brother-in-law Dr. Dharampal Singh Dhaka. At about 06.45 PM, he came out of medical shop and went to urinate in the toilet of Nursing Home. When he came back in lobby, a gun shot was heard from the room of the doctor. Thereafter, a young boy aged about 20 years, 6 feet tall, whitish colour, wearing red T-shirt, black lower and slippers came out of room of doctor. He was carrying pistol in his hand. Doctor also came out of room with a hand on his chest and was crying for help. He fell in the lobby. Blood was oozing out of his chest. He started looking after doctor. He asked Pritam, an employee at the hospital, to apprehend that boy. Pritam grappled that boy on the road. However, the boy pointed pistol towards Pritam. Pritam was asked to leave, otherwise he would be killed. Thereafter, that boy ran away. They arranged vehicle and took the doctor to Government hospital. He succumbed to the injuries.

Subsequently, statement of Jasbir Singh, Ex.D1, was recorded, wherein he stated the manner in which the earlier incident had taken place on 08.04.2007. Accused Anil, Rakesh, Ajit and Naresh were named. The post-mortem examination was conducted. The cause of death was opined to be haemorrhagic shock due to injury to vital organs as heart and stomach, which were sufficient to cause death in ordinary course of nature. Investigation was carried out and challan was put up after completion of all the codal formalities.

4. The prosecution has examined a number of witnesses. Accused were also examined under Section 313 Cr.P.C. They denied the case of the prosecution. It is in these circumstances, the appellants were convicted and sentenced, as noticed above. Hence, these appeals.

5. Learned counsel appearing on behalf of the appellants vehemently argued that the prosecution has failed to prove its case against the appellants. Learned counsel appearing for the State as well as learned counsel for the complainant vehemently argued that the prosecution has proved its case against the appellants beyond reasonable doubt and supported the judgment and order of the learned Court below.

6. We have heard learned counsel for the parties and gone through the judgment and record very carefully.

7. PW.1 Jasbir Singh is the eye witness. According to him, Dr. Dharampal Chaudhary was his brother-in-law. His hospital was situated near old bus stand, Bhiwani. Dr. Dharampal Chaudhary was running the hospital in the name of Chaudhary Nursing Home. He further deposed that he was running a medical shop in that very hospital under the name and style of Health Pharma Medicos. On 22.09.2008 at about 6.45 PM, he went

to bath-room. When he came back and was near the lobby of the hospital, he heard a gun shot. It came from the side of room of Dr. D.S. Chaudhary. He saw a young tall boy with whitish colour and clean shaven wearing red T-shirt and black lower coming out of the room of doctor. He ran outside. Dr. D.S. Chaudhary rushed towards lobby. He had put his hands on the chest. He was crying "Bachao Bachao". Blood was oozing from his chest. He fell down in the lobby. He further deposed that he ran towards doctor and tried to help him. He called assistant Pritam to apprehend the boy wearing red T-shirt. Pritam grappled that boy near the road. However, the boy again pointed pistol towards Pritam. Thereafter, accused ran away. They removed Dr. D.S. Chaudhary to Civil Hospital, Bhiwani. He died on the way. He also remembered the incident dated 08.04.2007. On that day, i.e. 08.04.2007, he was sitting at his shop known as Health Pharma Medicos in the evening. He heard noise from the lobby. He went there. He saw his sister Manju Chaudhary coming down-stairs. Assistant of hospital Pawan Kumar and patients of hospital also came out. He saw that four young boys, namely Anil, Rakesh, Ajit and Naresh surrounded Dr. D.S. Chaudhary. They were fighting with him. They picked up quarrel with Dr. D.S. Chaudhary. Anil was carrying a pistol on his waist and Naresh was carrying double barrel gun in his hand. In the meantime, people came and the matter was settled by the Panchayat on the next day. He identified Sandeep, Anil, Ajit and Rakesh in the court. In his cross-examination, he deposed that distance between counter of his shop and toilet was approximately 80 feet. Ordinarily, 30-40 patients remain in the lobby. He noticed blood on his clothes. He had seen Anil and Rakesh also on the day, when the Panchayat was convened after the incident of 08.04.2007. Panchayat was convened at Mitathal.

8. PW.2 Pritam Singh testified that he was working in X-ray branch. On the date of death of Dr. D.S. Chaudhary, he was in his hospital. He had not seen who had murdered Dr. D.S. Chaudhary. He had identified clothes of Dr. D.S. Chaudhary. He had prepared slip of a boy. He did not remember the name of the boy, because it was old matter. He also did not see any body running from there. He did not apprehend any body. He was declared hostile and was cross-examined by the learned Public Prosecutor. He admitted that he had given statement to the police. However, he has denied that he had told the police that a boy with red T-shirt was running but the last OPD patient was wearing T-shirt of red colour and black coloured pant. He never told the police that the accused had threatened him. He was at the OPD counter and not at the gate.

9. PW.4 Manju Devi is the wife of the deceased. She deposed that her husband was running a Nursing Home, known as 'Chaudhary Nursing Home and Heart Care Centre' near old bus stand Bhiwani. Randhir Singh, father of accused Ajit Singh, was admitted in their hospital some months back. Ajit Singh was there. Anil, Rakesh and another person, to whom she could not identify, were with him. They started misbehaving with Dr. D.S. Chaudhary. She heard the noise. She came down. Anil and Rakesh were standing there. Anil had put his hand on the chest of her husband and stated that they would shoot here. Other patients and their attendants intervened and ousted them from the hospital. She called her cousin brother. Thereafter, the matter was sorted out by Panchayat. She identified accused Ajit in the court. She also identified Rakesh as well as Anil. She heard the gun shot on 22.09.2008 in the evening. Entire Nursing Home was shaken.

10. PW.5 Virender Singh deposed that on 09.10.2008, he was away

to his village Mitathal. He remained Sarpanch of the village. Police asked him about the house of accused Ajit. He went to the house of accused Ajit along with the police. Ajit was not available. He was absconding. Accused Ajit was seen near bus stand, Bahadurgarh. Thereafter, he was apprehended. He was interrogated. He disclosed the manner in which the conspiracy was hatched and the weapon was arranged. His disclosure statement is Ex.P3. Disclosure statement of Anup alias Kirori was also recorded vide Ex.P4.

11. PW.6 Sataywan Dhaka deposed that Sandeep alighted from the vehicle. Accused Sandeep started leading the police party and they were following him. Accused Sandeep removed earth with his hand under the Zaal tree. He took out an envelope. There was a newspaper in that envelope. In the newspaper, there was a pistol. He handed over the same to ASI. Sketch of the pistol was prepared. Accused Sandeep also got recovered three pieces of papers from a plot, wherein it was written that same would be the fate for not paying money and he had put his signatures under that writing. He could get the same recovered. These papers were got recovered from a plot. These are Ex.P11, Ex.P12 and Ex.P13. Ex.P14 is the note book and Ex.P15 is the pen.

12. PW.8 Maini has proved call details of mobile telephone no. 9416219822 vide Ex.P17.

13. PW.12 Ram Kishan deposed that on 22.09.2008, a wireless message was received by SHO Hira Singh that a shot has been fired at the hospital of Dr. Chaudhary. Thereafter, he along with SHO Hira Singh went near Chaudhary hospital. SHO received telephonic message from MHC to the effect that doctor had died. They reached the crime spot. An empty of 9 mm was found at the spot. It was taken into possession. The clothes were

also recovered. In his cross-examination, he deposed that the empty was lifted from the place near the computer chair. The chair was same on which the doctor used to sit and examine the patients. It was lying at a distance of one foot from the chair. The empty Ex.P25 was lifted from inside the room of doctor. The size of that room might have been 10 feet x 11 feet.

14. PW.13 Partap Singh deposed that he was posted at Special Cell, Bhiwani. Ajit and Anup alias Kirori were interrogated in his presence. Thereafter, Anil and Rakesh were also interrogated in his presence. All of them made disclosure statements.

15. PW.18 ASI Ashok Kumar deposed that Inspector Hira Lal came to him on 26.11.2008. He moved an application before him to collect the details of telephone number 9416219822 pertaining to BSNL and other telephone number 9813919090 of Vodafone as well as of Idea bearing number 9728417113.

16. PW.19 SI Siri Bhagwan deposed that he was on temporary duty at Special Cell, Bhiwani on 07.10.2008. On that day, investigation of the case was handed over to him. He discussed the matter with Manju Devi. She doubted persons, namely Ajit, Anil, Rakesh and Kirori. Names of these persons also came in her statement recorded on 23.09.2008. The police came to know that accused Anil was running a shop of property dealer at Bahadurgarh and Ajit was residing with him. Accused Anup alias Kirori was also residing with him. They apprehended Ajit. Ajit made disclosure statement. Kirori asked Ajit to come to Kohlapur. On 15/16.09.2008, Ajit went to Kohlapur. At that place, Anup alias Kirori, Sandeep alias Patliya, Anil and Rakesh met him. They stayed there for four/five days. On 22.09.2008, they came to Bahadurgarh in the morning. They went to the

house of Anil. They took bath and meals. Anup alias Kirori asked Sandeep alias Patliya to fire the shot. Anup alias Kirori handed over a 9 mm pistol and two live bullets to Sandeep alias Patliya. Thereafter, Sandeep alias Patliya and Rakesh started for Bhiwani. Accused Anup alias Kirori was paid ₹ 1,000/-. Rakesh went to his village. Rakesh and Sandeep alias Patliya came to city area Bhiwani in a three wheeler. The hospitals of Dr. Chugh and Dr. Chaudhary were shown to Sandeep alias Patliya. They alighted at Jindal Medicos near Meham Gate. He saw Sandeep going towards hospital of Dr. Chaudhary. Ajit came to bus stand Bhiwani. He came to know from the passengers that Dr. Chaudhary was shot at. He went back to Bahadurgarh in a bus. His statement is Ex.P3. Accused Anup alias Kirori was interrogated. He disclosed that he was residing at Kolhapur with accused Sandeep and Anil. He used to visit Anil and Ajit at Mitathal. He narrated the entire story, as told by accused Ajit. He was again interrogated on 10.10.2008. He further confessed that after firing shot, accused Sandeep handed over pistol and one bullet to him at Delhi railway station. Thereafter, he and Sandeep went to Kolhapur. The police party also went to Kolhapur on 11.10.2008. When they were going towards Kolhapur, DSP received secret information that accused Sandeep alias Patliya was sitting on a tea stall near railway crossing. Accused Sandeep was arrested by SI Jagat Singh. Sandeep also pointed out the place from where he had got his hair trimmed and shave. On 11.10.2008, accused Sandeep during his disclosure statement admitted that after firing shot at Dr. Chaudhary, he had put his clothes in the bag given to him by Ajit along with three slips wherein it was written that this would be the fate if money would not be given. He further disclosed in his disclosure statement that the pistol handed over to accused

Anup alias Kirori was taken by him to the room at Kolhapur which was taken on rent. Thereafter, Anup alias Kirori came back to Haryana and later on, Sandeep took the pistol from that room and went to Raipur in Chhatisgarh, and after two-three days, he concealed pistol at that place and came back to Bahadurgarh by Utkal Express. Anil and Rakesh were also arrested. They also made disclosure statements. The pistol Ex.P8 was got recovered by accused Sandeep.

17. PW.22 is Inspector Hira Singh. He deposed that he recorded the statement of Jasbir Singh in Chaudhary Nursing Home. FSL team also arrived. Statement of Manju Chaudhary was also recorded.

18. PW.23 Inspector Jagat Singh deposed that Sandeep alias Patliya made disclosure statement Ex.P6.

19. PW.26 Shri Baseshar Singh, Additional District & Sessions Judge (Fast Track Court), Sirsa, deposed that accused Ajit was produced on 10.10.2008 to give his specimen signature and writing, but he refused. Similarly, PW.27 Shri Peeyush Gakhar, Judicial Magistrate Ist Class, Siwani, deposed that accused Sandeep alias Patliya was produced before him on 12.10.2008 for test identification parade, but he refused.

20. The post-mortem examination was conducted by PW.9 Dr. S.S. Dhankar and PW.10 Dr. Anil Chaudhary.

21. PW.9 Dr. S.S. Dhankar deposed that he along with Dr. Anil Chaudhary conducted post-mortem examination on 23.09.2008. Metallic foreign body was found in the soft tissues in sub costal area on the left side. It was sealed in vial. In their opinion, the cause of death was haemorrhagic shock due to injury to vital organs such as heart and stomach. This injury was sufficient to cause death in ordinary course of nature. Injuries were

ante-mortem in nature. He admitted in his cross-examination that there was no blackening, tattooing, charring and singeing of hair.

22. PW.10 Dr. Anil Chaudhary deposed that he conducted post-mortem examination along with Dr. S.S. Dhankar. He categorically deposed that there was a wound of entry of the size of 1.5 x 1 cm on the left side of just lateral to sternal border with inverted margins. One metallic foreign body was removed from soft tissue and sealed in a vial and handed over to police. He categorically deposed that injuries were not possible by injury due to pointed object. He admitted that there was no mention in the post-mortem report that injuries were caused with fire arm. The post-mortem report is Ex.P19.

23. According to the FSL report Ex.P104, 9 mm fired cartridge case marked C/1 was fired from pistol marked W/1 (Chambered for 9 mm cartridges) and not from any other fire arm. 9 mm fired bullet marked BC/1 was fired from pistol marked W/1 (Chambered for 9 mm cartridges) and not from any other fire arm.

24. The prosecution, in the present case, has proved that the appellants had hatched a conspiracy. The weapon of offence was handed over to Sandeep by Anup alias Kirori. PW.1 Jasbir Singh identified accused Ajit Singh, Sandeep alias Patliya, Anil Kumar and Rakesh Kumar. Accused Ajit Singh, Anil Kumar and Rakesh Kumar were also identified by PW.4 Manju Devi. The weapon of offence has been recovered at the instance of Sandeep alias Patliya, which was handed over to him by Anup alias Kirori. PW.6 Sataywan Dhaka has proved three slips which were duly got recovered by Sandeep alias Patliya. As per these slips Ex.P11, Ex.P12 and Ex.P13, threats were advanced. These slips were given to accused Sandeep

by accused Ajit. The FSL report Ex.P104 conclusively proves that the weapon recovered from Sandeep alias Patliya was used in the crime. PW.9 Dr. S.S. Dhankhar and PW.10 Dr. Anil Chaudhary opined that the cause of death was haemorrhagic shock due to injury to vital organs such as heart and stomach. This injury was sufficient to cause death in ordinary course of nature. PW.10 Dr. Anil Chaudhary conclusively proved that all the injuries were possible with fire arm. He also deposed that there was a wound of entry of the size of 1.5 x 1 cm on the left side of just lateral to sternal border with inverted margins. One metallic foreign body was removed from soft tissue and sealed in a vial. Same is Ex.P25. The call details have been duly proved by PW.8 Maini.

25. PW.2 Pritam Singh has not supported the prosecution case in its entirety and has admitted that the boy who ran from the spot, was wearing red T-Shirt and black coloured pant. The accused have made disclosure statements voluntarily, on the basis of which recoveries were effected and the conspiracy was unearthed. It is settled law that the prosecution has to prove the conspiracy. In the instant case, conspiracy theory has been proved by the prosecution. All the accused had hatched conspiracy in order to raise money.

26. Learned counsel appearing for the appellants have vehemently argued that the Investigating Officer stated that accused Anil and Rakesh had asked Sandeep alias Patliya not to commit the crime. However, the fact of the matter is that they were present and participated in the conspiracy.

27. Their Lordships of Hon'ble the Supreme Court in Noor Mohammad Mohd. Yousaf Momin v. The State of Maharashtra, AIR 1971

Supreme Court 885 have held that a conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Their Lordships have held as under :-

“7. So far as Section 34, Indian Penal Code is concerned, it embodies the principle of joint liability in the doing of a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109, Indian Penal Code on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged with one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120-B, Indian Penal Code criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an offence even if no step is taken to carry out that

agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107, I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto. In the present case the High Court, after referring to the evidence of Laxmibai, (P.W. 7) and Hari Chavan (P.W. 13) (whom that court expressly described as independent witnesses) and also of Murlidhar (P.W. 12), expressed its opinion in these words :

"All this evidence would show that at least since the 16th of April, 1965 the

accused Nos. 2, 3, and 4 were acting in concert and had something common in their mind. It would also show the presence of the accused No. 2 with a knife at the incident of the 16th April, 1965 and his threatening the deceased with the knife and the acts and words used by the accused No. 4 Mohammad Noora inspiring the accused No. 2 and some other persons who were with him to beat and kill Mohammad Yahya, the subsequent utterances of the accused No. 4 when the deceased returned from Bombay on the night of the 17th of April, 1965, the following of the deceased Mohammad Yahya by the accused No. 4 along with two persons when Mohammad Yahya went out to have a paan, the death of Mohammad Yahya soon thereafter, then running of the four persons from the scene of the offence the accused No. 3 misleading the police constable with respect to the incident, the accused Nos. 1 and 2 running away from the scene of the offence eluding the police constables, the accused No. 1 being caught after some struggle near the Municipal Office and found with his clothes stained with blood and having a knife in his shirt pocket, all these circumstances, taken together, would show that the accused Nos. 1 to 4 must have met previously before causing of the injuries to deceased and must have hatched out a plan of causing the death of the deceased or

causing at least grievous injuries to the deceased. Otherwise the presence of all the four accused near the scene of the offence at the time the incident occurred cannot be satisfactorily explained. The accused No. 4 had known that the deceased had returned from Bombay and the ominous words he used while asking his nephew Lateef to get down from the cot would suggest that he had still in mind that idea of doing away with the deceased and must have collected the other colleagues of his to carry out the plan which must have been hatched out prior to the incident. That inference can reasonably be drawn from the circumstances established in the case and it is in pursuance of that pre-planning to do away with the deceased, all the four accused must have followed the deceased when he went out that night and the deceased was stabbed by at least some of these accused persons."

The High Court also believed the evidence of Noorjehan (P.W. 11) and Jaitunbi, (P. W. 5). In its opinion though these two witnesses were, to a certain extent, interested their evidence appeared to it to be natural and its tenor did not show that they were deposing falsely. On a consideration of the entire material on the record the High Court felt that all the four accused persons must have hatched a plan to commit the murder of Mohd. Yahya after his return from Bombay and it was in pursuance of this conspiracy that Mohd. Yahya was murdered on the night of April 17, 1965. The

court took into account the facts that accused No. 1 was caught after some chase near the scene of occurrence, accused No. 2 was identified though he had made good his escape, accused No. 3, who was also identified by description, tried to mislead the police constables, and that accused No. 4 was seen following the deceased just before the murder with two or three persons. On this material the High Court upheld the appellant's conviction."

28. Their Lordships of Hon'ble the Supreme Court in State of M.P. v. S.B. Johari and others, (2000) 2 Supreme Court Cases 57 have held that in most of cases, conspiracy is based on circumstantial evidence. Their Lordships have held as under :-

"6. In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further again non-joining of two remaining

members to the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power under Section 319 of the Criminal Procedure Code. Not only that, the Court erroneously considered the alleged statement of the manufacturing company that quotations given by M/s Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount is paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial court.”

29. In Firozuddin Basheeruddin and others v. State of Kerala, (2001) 7 Supreme Court Cases 596, their Lordships of the Hon'ble Supreme Court have reiterated that as regards admissibility of evidence strict standards are not necessary inasmuch as any declaration made by a conspirator in furtherance of and during pendency of a conspiracy though hearsay, is admissible against each co-conspirator. The criminal conspiracy can be established on the basis of circumstantial evidence. Their Lordships have held as under :-

“23. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. In the face of modern

organised crime, complex business arrangements in restraint of trade, and subversive political activity, conspiracy law has witnessed expansion in many forms. Conspiracy criminalizes an agreement to commit a crime. All conspirators are liable for crimes committed in furtherance of the conspiracy by any member of the group, regardless of whether liability would be established by the law of complicity. To put it differently, the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offense, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators. Since an agreement of this kind can rarely be shown by direct proof, it must be inferred from circumstantial evidence of co-operation between the accused. What people do is, of course, evidence of what lies in their minds. To convict a person of conspiracy, the prosecution must show that he agreed with others that together they would accomplish the unlawful object of the conspiracy.

24. Another major problem which arises in

connection with the requirement of an agreement is that of determining the scope of a conspiracy - who are the parties and what are their objectives. The determination is critical, since it defines the potential liability of each accused. The law has developed several different models with which to approach the question of scope. One such model is that of a chain, where each party performs a role that aids succeeding parties in accomplishing the criminal objectives of the conspiracy. No matter how diverse the goals of a large criminal organisation, there is but one objective; to promote the furtherance of the enterprise. So far as the mental state is concerned, two elements required by conspiracy are the intent to agree and the intent to promote the unlawful objective of the conspiracy. It is the intention to promote a crime that lends conspiracy its criminal cast.

25. Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each

act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

26. *Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:*

“Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made ‘a partnership in crime’. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (Van Riper v. United States 13 F 2d 961, 967 (2d Cir 1926).

27. *Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.”*

30. In K. Hasim v. State of Tamil Nadu, AIR 2005 Supreme Court

128, their Lordships of Hon'ble the Supreme Court have held that the

essence of criminal conspiracy is the unlawful combination and overt act is not essential to prove conspiracy. Their Lordships have held as under :-

“22. It would be appropriate to deal with the question of conspiracy. Section 120-B IPC is the provision which provides for punishment for criminal conspiracy. Definition of "criminal conspiracy" given in Section 120-A reads as follows :

"120-A - When two or more persons agree to do, or cause to be done,

(1) an illegal act, or

(2) an act which is not 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."

The elements of a criminal conspiracy have been stated to be (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish the object, (c) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that

unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence, Vol.II, Sec. 23, p.559.) For an offence punishable under Section 120-B the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.”

31. Their Lordships of Hon'ble the Supreme Court in Mir Nagvi Askari v. Central Bureau of Investigation, (2009) 15 Supreme Court Cases 643, have held that the courts while drawing an inference from materials

brought on record to arrive at a finding whether criminal conspiracy has been proved or not, must bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. Their Lordships have held as under :-

“60. Criminal conspiracy, it must be noted in this regard, is an independent offence. It is punishable separately. A criminal conspiracy must be put to action; for so long as a crime is generated in the mind of the accused, the same does not become punishable. Thoughts even criminal in character, often involuntary, are not crimes but when they take a concrete shape of an agreement to do or caused to be done an illegal act or an act which is not illegal, by illegal means then even if nothing further is done, the agreement would give rise to a criminal conspiracy.

61. The ingredients of the offence of criminal conspiracy are:

- (i) an agreement between two or more persons;*
- (ii) an agreement must relate to doing or causing to be done either (a) an illegal act;*
(b) an act which is not illegal in itself but is done by illegal means.

Condition precedent for holding the accused persons to be guilty of a charge of criminal conspiracy must, therefore, be considered on the anvil of the fact which must be established by the prosecution, viz., meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means.

62. The courts, however, while drawing an

inference from the materials brought on record to arrive at a finding as to whether the charges of the criminal conspiracy have been proved or not, must always bear in mind that a conspiracy is hatched in secrecy and it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons took part are relevant. For the said purpose, it is necessary to prove that the propounders had expressly agreed to it or caused it to be done, and it may also be proved by adduction of circumstantial evidence and/or by necessary implication. [See Mohammad Usman Mohammad Hussain Maniyar v. State of Maharashtra (1981) 2 SCC 443 : 1981 SCC (Cri) 477].”

32. In R. Shaji v. State of Kerala, AIR 2013 Supreme Court 651, their Lordships of Hon'ble the Supreme Court have held that a criminal conspiracy is generally hatched in secrecy, owing to which, direct evidence is difficult to obtain. The offence can, therefore, be proved either by adducing circumstantial evidence, or by way of necessary implication. Their Lordships further held that in order to constitute the offence of conspiracy, it is not necessary that the person involved has the knowledge of all the stages of action. In fact, mere knowledge of the main object/purpose of conspiracy would warrant the attraction of relevant penal provisions. Their Lordships have held as under :-

“31. A criminal conspiracy is generally hatched in secrecy, owing to which, direct evidence is difficult to obtain. The offence can therefore be proved, either by adducing circumstantial

evidence, or by way of necessary implication. However, in the event that the circumstantial evidence is incomplete or vague, it becomes necessary for the prosecution to provide adequate proof regarding the meeting of minds, which is essential in order to hatch a criminal conspiracy, by adducing substantive evidence in court. Furthermore, in order to constitute the offence of conspiracy, it is not necessary that the person involved has knowledge of all the stages of action. In fact, mere knowledge of the main object/purpose of conspiracy, would warrant the attraction of relevant penal provisions. Thus, an agreement between two persons to do, or to cause an illegal act, is the basic requirement of the offence of conspiracy under the penal statute. (Vide: Mir Nagvi Askari v. CBI, AIR 2010 SC 528 : (2009 AIR SCW 7089); Baldev Singh v. State of Punjab, AIR 2009 SC (Supp) 1629 : (2009 AIR SCW 3730); State of M.P. v. Sheetla Sahai, AIR 2009 SC (Supp) 1744 : (2009 AIR SCW 5514); R. Venkatkrishnan v. CBI, AIR 2010 SC 1812 : (2010 AIR SCW 2195); S. Arul Raja v. State of T.N., (2010) 8 SCC 233 : (2010 AIR SCW 5923); Monica Bedi v. State of A.P., (2011) 1 SCC 284 : (AIR 2011 SC (Supp) 641 : 2010 AIR SCW 6968); and Sushil Suri v. CBI, AIR 2011 SC 1713 : (2011 AIR SCW 2909)."

33. Learned counsel appearing on behalf of the appellants have also argued that there is delay in lodging of the FIR. The fact of the matter is that FIR should be lodged with promptitude but the delay can be explained. In the present case, the delay is not inordinate. There was some delay in sending parcels to FSL for examination, but it has not caused any

prejudice to the appellants. Moreover, the accused can not take advantage of faulty investigation.

34. The motive in the present case, as discussed above, was to raise money. All the material witnesses have been examined. It is quality of statements of the witnesses, not the number of witnesses. The weapon of offence i.e. pistol Ex.P8, was recovered from village Gujrani. The disclosure statements Ex.P3, Ex.P4, Ex.P6, Ex.P57, Ex.P58, Ex.P74 and Ex.P80 are made voluntarily. The appellants have not led any evidence that these statements were obtained by torture.

35. Learned counsel appearing on behalf of the appellants have also argued that there was no blackening or tattooing. The fact of the matter is that the dead body was examined by PW.5 Ravinder Pal. He gave his report Ex.P97. According to him, margins of the wound were inverted and blackening was observed around the wound. He was the first man to examine the body. It is well settled in criminal jurisprudence that if the case is proved conclusively by the prosecution, motive may not be that relevant. The statements of PW.1 Jasbir Singh and PW.4 Manju Devi inspire confidence. Their statements cannot be discarded merely on the ground that they were closely related with the deceased. They cannot be termed as interested witnesses. As far as test identification parade of accused Sandeep alias Patliya is concerned, he has merely stated that he was not ready for test identification parade. He has not stated that he had earlier been seen by the witnesses. Similarly, no reasons have been assigned by accused Ajit as to why he refused to give his specimen handwriting.

36. The prosecution has proved its case against the appellants beyond reasonable doubt. There is no occasion for us to interfere with the

well reasoned judgment of the learned trial Court. Accordingly, the appeals are dismissed.

(RAJIV SHARMA)
JUDGE

February 01, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes