

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

1. CRA-D-267-DB-2014

Gurpreet Singh @ Gopi and another

... Appellants

Versus

State of Punjab

... Respondent

2. CRA-D-1139-DB-2014

Sajjan Singh @ Bawa

... Appellant

Versus

State of Punjab

... Respondent

Reserved on : 05.02.2019
Date of decision : 11.02.2019

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR.JUSTICE AVNEESH JHINGAN**

Present: Mr.Sanjeev Sharma, Advocate
for the appellants in CRA-D-267-DB-2014.

Mr.Anupam Sharma, Advocate
for the appellant in CRA-D-1139-DB-2014.

Mr.S.P.S. Tinna, Addl.A.G. Punjab.

RAJIV SHARMA, J.

Since common questions of law and facts are involved in the
aforesaid two appeals, therefore these are taken up together and disposed of
by a common judgment.

2. These two appeals are directed against the judgment and order
dated 11.09.2013 rendered by the Additional Sessions Judge, Amritsar in

Sessions IPC Case No.48 of 2010 whereby the appellants, who were charged with and tried for offences punishable under Sections 302, 120-B of the Indian Penal Code (in short “IPC”), have been convicted thereunder and sentenced as under:-

Name of convict	Offence u/s	Sentence & fine
Gurpreet Singh	302 IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.
Gurpreet Singh	120-B IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.
Sajjan Singh	302 IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.
Sajjan Singh	120-B IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.
Prem Singh	302 IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.
Prem Singh	120-B IPC	Imprisonment for life and to pay a fine of Rs.3000/-, I/d of payment of fine to further undergo rigorous imprisonment for a period of six months.

Both the substantive sentences were ordered to run concurrently.

3. The case of the prosecution in a nutshell is that on 15.05.2010 SI Shivdarshan Singh of Police Station Kambo, Amritsar, along with other police officials was present in the police station. He received a telephonic information that the robbers had committed the murder of wife and sister of Gurpreet Singh @ Gopi in Adda Gaunsabad. SI Shivdarshan Singh along with other police officials reached the house of Gurpreet Singh @ Gopi. He recorded the statement of Gurpreet Singh @ Gopi at 4.30 A.M. on 15.05.2010. In his statement, complainant Gurpreet Singh @ Gopi had got recorded that he was into the rice business. On 14.05.2010, the complainant along with his wife Sukhwinder Kaur, sister Rajbir Kaur @ Bholi and three

children had gone to Manawala, Jalandhar Road to meet his '*Bua*'. After meeting his '*Bua*' they were returning to their house in a jeep bearing No.HP-26-0268. The jeep was being driven by the complainant. At about 12.00 (night) when they reached near the bus stop, Gaunsabad, four young men came on two motor cycles. They chased the jeep of the complainant. The complainant tried to run his jeep at a speed. However in the meantime, two young men came in white colour maruti car. They parked their car in front of the jeep of the complainant. They stopped the jeep. These persons took Gurpreet Singh @ Gopi aside. Three young men took away the jeep of complainant along with his wife, sister and children. Other three persons demanded the cash and ATM card from the complainant. The complainant handed over the cash amount of Rs.25,000/- which he collected after selling the rice and his purse. Thereafter two vehicles were seen coming. The accused ran away from the spot. The complainant immediately started his jeep and reached his village Kaler. He saw that his wife and sister were lying dead. Site plan was prepared vide memo Ex.PW9/E. Inquest reports of deceased Rajbir Kaur and Sukhwinder Kaur were prepared. The bodies were sent for post-mortem examination. Investigation was completed. The challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses. Statements of appellants were recorded under Section 313 Cr.P.C. Appellants Sajjan Singh @ Bawa and Prem Singh @ Premi had taken the plea in defence that they have been falsely implicated since they had enmity with the Sarpanch. The appellants were convicted and sentenced, as noticed hereinabove. Hence these appeals.

5. Learned counsel appearing on behalf of the appellants have

vehemently argued that the prosecution has failed to prove the case against the appellants.

6. Learned counsel appearing on behalf of the State has supported the prosecution case.

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

8. PW-1 Dr.Gurmanjit Rai had conducted the post-mortem examination on the body of Sukhwinder Kaur. He noticed the following injuries on her body:-

“1. Reddish brown abrasion 1 x 0.75 cm was present on middle of left cheek.

2. Reddish blue bruise 3.5 x 3.5 cm was present on right side of front of head. 6 cm above middle of eye brow.

3. Reddish brown abrasion 1.75 x 0.8 cm was present on right side of chin in its lower part.

4. Ligature mark 14 cm x 1.5 cm long of reddish brown colour was present on front and left side of neck extending from thyroid cartilage upto 7.5 cm below mastoid process and on right side of neck 6.5 x 1.5 cms reddish brown ligature mark near lobule of ear and side of neck. Ligature was horizontal on front of neck and below adam apple. On dissection of neck and ligature mark, infiltration of blood was present in the muscle of neck and soft tissue on neck on both side under the ligature mark. Left side jugular vessel found lacerated and lymph glands found having infiltration of blood. Hyoid bone was intact.

5. Reddish brown abrasion 1 x 06 cm was present on right side of trunk. 7.5 cm above anterior superior iliac spine.”

The cause of death in his opinion was asphyxia due to ligature strangulation which was sufficient to cause death in the ordinary course of nature. The probable time between injuries and death was within few minutes and between death and post-mortem was about 12 to 24 hours. He proved the post-mortem report Ex.PW1/A.

On the same day at 03.30 P.M. he conducted the post mortem on the body of Rajbir Kaur. He noticed the following injuries:-

- “1. Ligature mark 22 cm x 1.5 cm to 1.8 cm reddish brown colour, which was present on front and both sides of neck horizontally, 4.5 cm below right lobule of ear and 7.5 cms below left lobule ear at the level of thyroid cartilage. Multiple reddish brown abrasion were present on left side of neck above the ligature mark.*
- 2. Lacerated wound 2 x 0.3 cm was present on dorsum of right big toe. Clotted blood was present.”*

All the injuries were ante mortem in nature. In his opinion, the cause of death in this case was asphyxia as a result of ligature strangulation which was sufficient to cause death in the ordinary course of nature. The probable time between death and injury was immediately and between death and post-mortem was about 12 to 24 hours. He proved the post-mortem report Ex.PW1/D.

9. PW-2 Satnam Singh testified that he was the property dealer. His uncle Narinder Singh met him in May, 2010. He told him that the accused present in Court, used to beat and maltreat his cousin. On 01.05.2010, he along with his uncle Narinder Singh visited the in-laws house of his sister Sukhwinder Kaur. They asked Gurpreet Singh @ Gopi why he was maltreating his sister. Gurpreet Singh @ Gopi started beating

his sister in their presence. His sister told them that Gurpreet Singh @ Gopi was having illicit relations with some other girl, due to which he used to beat her. He was also planning to throw her out of his house.

10. PW-3 Hardev Singh testified that he was mason by profession. On 14.05.2010, he along with Subash Chander was standing at Gawal Mandi Chowk at about 10.30 P.M. They stopped a jeep Marshal Mahindra. It was driven by Gurpreet Singh @ Gopi. His wife Sukhwinder Kaur and sister Rajbir Kaur were sitting on front seat. The children were also present in the jeep. Gurpreet Singh @ Gopi told them that his wife was ill and he had to take medicine from Mahal. Thereafter Gurpreet Singh @ Gopi went to Mahal in his jeep. Gurpreet Singh @ Gopi along with his wife, sister and children had taken juice from a *Rehri* from Gawal Mandi Chowk, Amritsar, in their presence. Gurpreet Singh @ Gopi also telephonically invited somebody while going on other side of jeep. In his cross-examination, he deposed that he belongs to village Kaler. He learnt about the murder of wife and sister of Gurpreet Singh @ Gopi. On the next morning, police came to his village. He denied the suggestion that on 14.05.2010 he did not go to Gawal Mandi Chowk nor Subash Chander was with him.

11. PW-4 Gurcharan Singh denied that he was standing on the turning of Ghanupur Kale Road at 11.15 P.M. He did not know anything about this case. He knew one of the accused (Sajjan Singh) who belongs to his village. He was declared hostile and was cross-examined by the learned Public Prosecutor. He had denied the contents of the statement Mark A recorded on 16.05.2010.

12. PW-6 Parveen Kumar HC testified that he had obtained the call details from the office of Airtel, Chandigarh of mobile numbers 98721

45904 and 98158 78023.

13. PW-7 Sanjeev Chopra testified that he was sitting in his TATA Sumo vehicle No.PB 02X 7040 after parking outside Hathi Gate on one side. Gurpreet Singh @ Gopi along with Sajjan Singh son of Manna Singh, resident of Mahal and Prem Singh @ Premi resident of Karhyal, all accused present in Court, came to him and sat inside the TATA Sumo. They were previously known to him. They told him that they had committed a mistake. First of all Gurpreet Singh @ Gopi told him that he had suspicion that his wife Sukhwinder Kaur and sister Rajbir Kaur @ Bholi were having illicit relations with son in-law of his uncle Sulakhan Singh namely Bagga Singh. He further told him that he made a plan with Sajjan Singh and Prem Singh that he would bring his wife and sister on some pretext outside from his house in jeep and then he would call Sajjan Singh and Prem Singh at Mahal Bus Stand. He further told him that on 14.05.2010 he took his wife and sister along with him in his jeep No.HP 26-0268 on the pretext of meeting his aunt Soma of Mana Wala. They left for Manawala at 10.30 P.M. and at about 11.00 P.M. they reached Gawal Mandi Chowk. Gurpreet Singh @ Gopi further told him that he offered juice to his sister and wife after putting the sleeping pills in the juice. Thereafter he called Sajjan Singh and Prem Singh near Adda Mahaland. Then he started from Gawal Mandi Chowk. After about 15 minutes, he reached near Kalewale turn where Sajjan Singh and Premi were already standing. They also came there on jeep and reached Adda Gaunsabad. Gurpreet Singh @ Gopi further told him that he caught hold of his wife from arms and Sajjan Singh was having a plastic rope. They put the rope around her neck and from right side, he caught hold of the rope and from left side Prem Singh caught hold of the rope. They strangled his

wife. After two minutes, Sukhwinder Kaur died. He further told him that he caught hold of arms of his sister Rajbir Kaur and Sajjan Singh put the rope around the neck of Bholi and from the right side of rope, Sajjan Singh caught hold of it and from left side of rope, Prem Singh caught hold of rope and both of them strangled Rajbir Kaur and after two minutes, she died. He handed over Rs.10,000/- each to Sajjan Singh and Prem Singh. He further told him that he lodged the FIR on wrong facts. Sajjan Singh also made extra judicial confession before him. Prem Singh also disclosed about the manner in which the conspiracy was hatched and executed. In his cross-examination, he deposed that he was resident of Hall Bazar, Amritsar. All the accused in this case are Mazhabis by caste. Their respective villages are at a distance of 20 to 25 kilometers from Amritsar. He had no relation or social connection with any of the accused. He never served in police. He had three taxis.

14. PW-8 Gurinder Singh HC deposed that on 15.05.2010, I.O. sent the dead bodies of Sukhwinder Kaur and Rajbir Kaur @ Bholi to Forensic Science Department, Medical College, Amritsar, for conducting post mortem. Accused Gurpreet Singh @ Gopi had made disclosure statement Ex.PW8/D in his presence. He also signed the same. Accused Gurpreet Singh @ Gopi got recovered driving licence Mark A and mobile phone from his house. Accused Prem Singh also made disclosure statement Ex.PW8/F. He got recovered Rs.5000/- from the trunk lying in his *Kulli*. Accused Sajjan Singh also made disclosure statement Ex.PW8/H. He got recovered plastic rope and Rs.5000/- from his house.

15. PW-9 Shivdarshan Singh Inspector deposed that he reached the spot. He prepared the site plan Ex.PW9/K. Statement of witnesses were

recorded. He recorded the statements of Hardev Singh, Subash Kumar, Gurcharan Singh Goldi, Narinder Singh and Satnam Singh. During the course of investigation, it transpired that Gurpreet Singh @ Gopi had hatched conspiracy with Prem Singh and Sajjan Singh and committed the murder of his wife and sister. The accused made disclosure statements, on the basis of which recoveries were effected. In his cross-examination, he deposed that accused Gurpreet Singh @ Gopi was arrested after the cremation of dead bodies. Rajbir Kaur deceased was unmarried.

16. PW-11 Subash Chander deposed that his daughter Anju was married. She was living in village Kaler Ram Tirath. He along with Hardev Singh (*Jeth* of his daughter) were standing at Gawal Mandi Chowk on 14.05.2010. At about 11.00 P.M. Gurpreet Singh @ Gopi accused came there on his jeep. His wife, sister and children were also present in jeep. They asked Gurpreet Singh @ Gopi to give them lift up to their village. Accused told them that his wife was sick. He had to take medicine and was not going to village shortly. Gurpreet Singh @ Gopi took glasses of juice from a hawker near them. The same were handed over to his wife and sister. They consumed it. Gurpreet Singh @ Gopi kept on talking on phone for about 30-35 minutes. In his cross-examination, he deposed that there was no bus service after 8.00 P.M. to his village.

17. PW-12 Narinder Singh deposed that his daughter Sukhwinder Kaur was married with Gurpreet Singh @ Gopi prior to 10/12 years. She was having four children. He got a message from Sukhwinder Kaur that her husband Gurpreet Singh @ Gopi used to beat her and maltreat her. He along with his nephew Satnam Singh went to the in-laws house of her daughter. He asked Gurpreet Singh @ Gopi why he maltreated his daughter

Sukhwinder Kaur. In their presence, he gave beatings to his wife. His daughter told him that he was having illicit relation with some other lady. After some days, they received a message that Sukhwinder Kaur and Rajbir Kaur were killed. When they reached the house of in-laws of his daughter, they heard that Gurpreet Singh @ Gopi had killed his daughter Sukhwinder Kaur and his sister Rajbir Kaur.

18. We have gone through the contents of statement Ex.PW9/A got recorded by Gurpreet Singh @ Gopi. He has concocted the story to hide the crime. The version given by him in Ex.PW9/A is unbelievable.

19. It has come in the statement of PW-2 Satnam Singh and PW-12 Narinder Singh father in-law of Gurpreet Singh @ Gopi that appellant Gurpreet Singh @ Gopi used to give beatings to his wife. He was having extra marital relation with some girl. Gurpreet Singh @ Gopi was last seen together in the company of deceased Sukhwinder Kaur and Rajbir Kaur by PW-3 Hardev Singh as well as PW-11 Subash Chander. They asked for lift from Gurpreet Singh @ Gopi. Gurpreet Singh @ Gopi told them that his wife was sick. Thereafter Gurpreet Singh @ Gopi offered juice to his wife and sister. The accused had made extra judicial confession to PW-7 Sanjeev Chopra about the manner in which the conspiracy was hatched by them.

20. 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."

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.”

22. 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.”

23. 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.”

24. 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].”

25. 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)."

26. The cause of death was asphyxia due to ligature strangulation as per post-mortem reports of Sukhwinder Kaur and Rajbir Kaur. The injuries were ante mortem in nature. The probable time between injuries and death was within few minutes and between death and post-mortem was about 12 to 24 hours. Accused Gurpreet Singh @ Gopi made disclosure statement vide Ex.PW8/E. Accused Prem Singh @ Premi made disclosure statement vide Ex.PW8/F. Accused Sajjan Singh made disclosure statement vide Ex.PW8/H. Recoveries were made on these statements. The defence taken by Prem Singh @ Premi and Sajjan Singh in statements under Section 313 Cr.P.C. is that they were falsely implicated due to enmity with the Sarpanch. However, no material has been placed on record to prove this fact. It has come on record that accused Gurpreet Singh @ Gopi was doubting fidelity of his wife and sister. According to the report of Chemical Examiner Ex.PW1/C, no poison was detected in the contents of exhibits I, II, III & IV but spermatozoa were detected in the contents of exhibit V(a) in the case of Sukhwinder Kaur. According to the report of Chemical Examiner Ex.PW1/F, no poison was detected in the contents of exhibits I,

II, III & IV. Spermatozoa were detected in the contents of exhibit V(a) in the case of Rajbir Kaur @ Bholi. The appellants had hatched conspiracy to eliminate Sukhwinder Kaur and Rajbir Kaur. In case of Sukhwinder Kaur, ligature mark 14 x 1.5 cm long of reddish brown colour was present on front and left side of neck extending from thyroid cartilage upto 7.5 cm below mastoid process and on right side of neck 6.5 x 1.5 cm reddish brown ligature mark near lobule of ear and side of neck. In case of Rajbir Kaur, ligature mark 22 cm x 1.5 cm reddish brown colour was present in the front and both sides of neck horizontally, 4.5 cm below right lobule of ear and 7.5 cms below left lobule of ear at the level of thyroid cartilage. Multiple reddish brown abrasions were present on left side of neck above the ligature mark. The ocular evidence has been duly supported by the medical evidence. The rope Ex.MO3 was taken into possession by the police vide memo Ex.PW8/J.

27. 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 and order of the learned trial Court. Accordingly, the appeals are dismissed.

(RAJIV SHARMA)
JUDGE

(AVNEESH JHINGAN)
JUDGE

February 11, 2019.

Davinder Kumar

Whether speaking / reasoned

Yes/No

Whether reportable

Yes/No