

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

(1) CRA-D-820-DB of 2015 (O&M)

Mayank Chaudhary and another

.... APPELLANTS

Versus

State of Haryana

..... RESPONDENT

(2) CRA-D-832-DB of 2015

Kejar Verma

.... APPELLANT

Versus

State of Haryana

..... RESPONDENT

Reserved on : 01.03.2019

Date of decision : 06.03.2019

**CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE KULDIP SINGH**

Present: Mr. Manish Soni, Advocate,
for appellant No.1 in CRA-D-820-DB-2015.

Mr. Robin Dutt, Advocate,
for the appellant in CRA-D-832-DB-2015 and
for Ms. Priyanka Dalal, Advocate,
for appellant No.2 in CRA-D-820-DB-2015

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

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RAJIV SHARMA, J.

1. Since common questions of law and facts are involved in CRA-D-820-DB-2015 and CRA-D-832-DB-2015, therefore, these are taken up together and being disposed of by a common judgment.

2. These appeals are instituted against the judgment dated 20.04.2015 and order dated 24.04.2015, rendered by learned Additional Sessions Judge, Gurgaon, in Sessions Case No. 34 of 2013, whereby appellants Mayank Chaudhary, Rahul and Kejar Verma, who were charged with and tried for the offences punishable under Sections 302, 392, 397, 120-B, 34 of the Indian Penal Code and Section 25 of the Arms Act, were convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 5,000/- each for the commission of offence under Section 302 of the Indian Penal Code. In default of payment of fine, they were sentenced to further undergo simple imprisonment for a period of six months. They were further convicted and sentenced to undergo life imprisonment and to pay a fine of Rs. 3,000/- each for the commission of offence under Section 120-B of the Indian Penal Code. In default of payment of fine, they were sentenced to further undergo simple imprisonment for a period of three months. Appellants Rahul and Mayank were further convicted and sentenced to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 2,000/- each for the commission of offence under Section 25 of the Arms Act. In default of payment of fine, they were sentenced to further undergo simple imprisonment for a period of two months. All the sentences were ordered to run concurrently.

3. The case of the prosecution, in a nutshell, is that Tarika

Chaudhary (PW.5) lodged report vide Ex.PC on 06.03.2013 at about 9.00 PM to the effect that she was resident of house No. T-4/1305, Park View Residency, Sector 3, Palam Vihar, Gurgaon. She was student of 10 + 2. She was taking examinations. At 9.30 AM, she left her house to take her examination in Saint Michel Senior Secondary School, Shivpuri, Gurgaon. She was accompanied by her brother Saurabh Chaudhary. Her father Anil Chaudhary (since deceased) and her elder brother Mayank Chaudhary were present in the house. Her mother had passed away three years back. Saurabh Chaudhary came back to his house. Accused Mayank Chaudhary, her brother, was pressing hard her father to sell the present house to purchase another house. However, her father did not appreciate the said idea. It led to the continuous bickering. Mayank Chaudhary used to call bad names to the deceased. Her examination was over at 1.30 PM. Accused Mayank Chaudhary came to the school to pick her. She accompanied him. She came back to her house and found the door of the house unlocked. She went inside the room of the deceased. Her father was lying on the bed. His face was covered with pillow. She lifted the pillow. She found that her father was bleeding from behind his left ear. The bed and bed sheet were soaked in blood. She was scared. She screamed. Mayank Chaudhary asked what happened. She and Mayank Chaudhary tried to put their father on a chair. Mayank Chaudhary examined the cupboard in the room of the deceased. He stated to her that the cupboard was lying open. He made her to believe his story that some burglar had come inside the house. He had killed their father. He had made good his escape with the money. Neighbourers came on the spot. The deceased was removed to Columbia Asia Hospital, Palam

Vihar, Gurgaon. The doctor declared him 'brought dead'. She suspected that her brother Mayank Chaudhary had killed her brother. The blood stained bed sheet, pillow, empty cartridge and fired bullet were recovered from the flat. Accused Mayank Chaudhary was arrested on 06.03.2013 at 9.40 PM. A country made pistol along with one live cartridge and magazine were recovered on the basis of disclosure statement made by accused Mayank Chaudhary. The recoveries were effected from the office of Safe Packers and Movers in Mahipalpur, Delhi. On 07.03.2013, accused Rahul and Kejar Verma were arrested. According to the prosecution case, Mayank Chaudhary and Rahul had entered the room of the flat of the deceased. Accused Kejar Verma had provided the country made pistol, live cartridge and magazine after receiving Rs. 50,000/- from accused Mayank Chaudhary. A sum of Rs. 67,000/-, missing from the room of the deceased, along with one magazine, was recovered from Rahul. The body was sent for post-mortem examination. The investigation was completed and challan was put up after completing all the codal formalities.

4. The prosecution examined a number of witnesses in support of its case. Statements of the accused were also recorded under Section 313 Cr.P.C. They denied the case of the prosecution. According to them, they were falsely implicated. They examined two witnesses in their defence.

5. The appellants were convicted and sentenced, as noticed above. Hence, this appeal.

6. 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 vehemently argued

that the prosecution has proved its case against the appellants beyond reasonable doubt. She supported the judgment and order of the learned Court below.

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

8. PW.6 Dr. Deepak Mathur conducted the post-mortem examination on the body of Anil Chaudhary. He proved the post-mortem report Ex.PW.6/B. He led his evidence by filing affidavit Ex.PW.6/A. He had noticed the following injuries on the body of Anil Chaudhary :

- (1) Lacerated wound 0.7 x 0.5 cm, with stellate shaped edges, on left side zygomatic region, inverted margins, 1 mm of abrasion collar seen surrounding the wound, wound seen continuous inside piercing subcutaneous tissue, left temporal bone with inward bevelling, traversing inside tearing the corresponding meninges, temporal lobe of brain, going backward and medially, lacerating the contra lateral temporal lobe of brain with dura and exiting through the right temporal bone with outward bevelling and exit wound 0.8 cm x 0.8 cm with everted margins, blackening seen along the track.”

The cause of death was cranio-cerebral damage following ante-mortem single firearm injury. The injury was sufficient to cause death in normal course of life. The probable time between injury and death was few minutes and the time between death and post-mortem was between 18 to 24 hours.

9. PW.11 Dr. Kulvinder Singh has proved the Crime Scene Visit Report Ex.PW.11/A. He had advised the Investigating Officer to send the cartridge case, bullet, pillow with holes, recovered from the spot, to the

Director FSL, Madhuban. He had also advised to send stained pillow covers, swabs, which were recovered from double bed to the Director, FSL, Madhuban, for examination. He had not noticed any pistol on the crime scene.

10. PW.1 Vivek Vohra testified that on 06.03.2013, he was present in the market of Sector 22/23, Gurgaon to meet one of his clients. He received a telephonic call from accused Mayank Chaudhary. He asked him to immediately come to his house. He rushed to T-4/1305, Park View Residency, Sector 3, Palam Vihar. He saw that his uncle Anil Chaudhary was brought to ground floor. Blood was oozing from one of the ears of Anil Chaudhary. They put the body of Anil Chaudhary in his Altis car. He was taken to Columbia Asia Hospital. The doctors declared him 'brought dead'. In his cross-examination, he stated that he had not seen the occurrence.

11. PW.2 Girish Kumar prepared site plan Ex.PW.2/A.

12. PW.4 Saurabh Chaudhary deposed that he had gone to the office of his friend Vijay Yadav on 06.03.2013. His sister Tarika informed him at about 1.50 PM regarding the murder of his father. Thereafter, he rushed to Columbia Asia Hospital, Gurgaon. The doctor declared his father dead. He identified the dead body. The inquest report Ex.PA was prepared. According to him, some unknown persons had murdered his father for committing robbery in their house. He was declared hostile and was cross-examined by the Public Prosecutor. He denied his statements Ex.PW.4/A. He did not state to the police that he was completely sure that his father was murdered by his brother Mayank Chaudhary with the help of some other persons. He had not stated to the police that his brother Mayank Chaudhary

was picking up quarrels with his father. He admitted his signatures at point A of Ex.PW.4/A. Volunteered that the same were obtained by the police on blank papers. He had not stated to the police that on inquiry, he came to know that his father had been murdered by his brother with the help of some other persons. He was confronted with portion A to A of Ex.PW.4/B, wherein it was so recorded. In his cross-examination by the learned defence counsel, he deposed that he had come back to his house on 06.03.2013, after dropping his sister Tarika. He left the house again with his brother Mayank Chaudhary in their respective vehicles at about 12.20 PM. His brother Mayank Chaudhary had gone to pick up his sister Tarika from her examination centre. They both found their father to be shot dead by some unknown persons. His brother was wrongly implicated by the police. There was no dispute whatsoever amongst their family members.

13. PW.5 Tarika Chaudhary deposed that in the morning of 06.03.2013, she accompanied her brother Saurabh Chaudhary. She went to examination centre at Saint Michel School, Shivpuri, Sector 7, Gurgaon. Her examination was over at 1.30 PM. Her brother Mayank Chaudhary was seen waiting for her. She accompanied him. She came back to her home. Thereafter, both of them entered inside their house. They found that her father was sleeping on the bed. His face was covered with a pillow. When they removed the pillow, his face was smeared with blood. He was bleeding from back side of his right ear. There was a bullet mark on the temple of her father. There was another mark in the backside of his ear. They both tried to make their father come to senses and tried to make him sit on a chair, but he was not responding. They were unable to take their father to hospital. They

sought the help of their neighbours. Their father was taken to Columbia Asia Hospital, Palam Vihar, Gurgaon. She noticed a burnt hole in the pillow cover at the bed of her father. Everything in the room was scattered. She noticed one bullet in the room. Her cousin Vivek Vohra also accompanied them to hospital. She did not disclose to the police who was behind the murder of her father. Nothing was recovered in her presence. She was declared hostile and was cross-examined by the Public Prosecutor. She identified her signatures at point A of Ex.PC. Volunteered that the police had obtained her signatures on blank papers in Columbia Asia Hospital. She did not give statement Ex.PC to the police. She had not told to the police that her brother Mayank Chaudhary was pressurising her father for selling the current house and to purchase another house few times ago. She was confronted with portion A to A1 of Ex.PC, wherein it was so recorded. She did not state before the police that her brother went in the room of her father, checked his almirah and came back to inform her that since the almirah was lying opened, some unknown person came to their house and he had killed their father for stealing money. She was confronted with portion B to B1 of Ex.PC, wherein it was so recorded. She did not state to the police that she was sure that her brother Mayank Chaudhary murdered her father by taking help from some unknown person and action be taken against him. She was confronted with portion C to C1 of Ex.PC, wherein it was so recorded. One sealed parcel containing one bed sheet Ex.P1, pillow with cover Ex.P2 and one cushion cover Ex.P3, all stained with blood, was produced during the course of her cross-examination by the Public Prosecutor. The witness admitted that these articles were lying in the room.

Volunteered that a pistol and a bullet piece were lying on the said bed. She denied that Ex.P1 to Ex.P3 were recovered by the police in her presence. She denied taking of swabs Ex.P4 and Ex.P5 by the police in her presence. She denied that wrist watch Ex.P6 and ID Card Ex.P7 were lying at the place of occurrence. In her cross-examination by the learned defence counsel, she deposed that her mother died on 18.06.2009 on account of sudden asthma attack. Her father used to remain in depression. He had withdrawn himself from the society. He was not doing any job. Her father was treated for the depression. She admitted that in October, 2011, her father became unconscious and was rushed to Columbia Asia Hospital. On the day of incident, her father was feeling uncomfortable. The pistol was having wooden grip. Her father was having no enmity with any one. Her father might have committed suicide on account of depression. The police never verified as to how and from where her father managed the weapon.

14. PW.9 ASI Paras Singh deposed that Inspector Naresh had deposited the case property, i.e. 10 sealed parcels, with him on 06.03.2013. On 17.04.2013, he handed over the same to Constable Sunil Kumar for depositing with the FSL, Madhuban. On 07.03.2013, accused Rahul Ghosh made a disclosure statement Ex.PF and another disclosure statement Ex.PF/1 on 08.03.2013. Accused Mayank Chaudhary made disclosure statement Ex.PG on 08.03.2013 regarding his involvement in the crime.

15. PW.10 Naresh Dagar deposed that he was working as Assistant Security Officer in Parkview Residency, Palam Vihar, Gurgaon. He was joined in the investigation by the police on 07.03.2013. He had handed over photo copy of IN-OUT register containing entries and exit of all the

vehicles visited or entered Parkview Residency on 06.03.2013, vide Mark A to Mark D. The precise details of the entry and exit of the vehicles bearing registration No. HR-26-BG-8680, HR-26-AH-7319 and MP-04-CB-4309 were manually prepared and were attested by him. In his cross-examination, he admitted that he had not brought the original register in the court. There was no movement of vehicle No. MP-04-CB-4309 on 06.03.2013. There was no entry of vehicles bearing registration No. HR-26-BG-8680 and HR-26-AH-7319 after they departed at 12.26 PM till 1.40 PM.

16. PW.14 Inspector Naresh Kumar was the Investigating Officer. He reached Columbia Asia Hospital, Gurgaon, on 06.03.2013. He collected MLC. Inquest report Ex.PA was prepared. FIR was registered. He prepared rough site plan Ex.PB.14/B. He took into possession bed sheet (Ex.P1), pillow with cover (Ex.P2) and one cushion cover (Ex.P3), all stained with blood, one wrist watch (Ex.P6) and ID Card (Ex.P7). One empty case of bullet and one lead of bullet were lifted from the spot. Blood was also lifted with the help of cotton swab from bed. He arrested Mayank Chaudhary. Mayank Chaudhary made disclosure statement Ex.PW.14/C and got recovered a country made pistol from village Mahipalpur, from a Tata 407, in which household goods of the house of Rahul Ghosh were being packed and were to be sent to Indore. A live cartridge was found present in the magazine. The country made pistol (Ex.P10) and magazine (Ex.P11) were produced in the court. He had taken into police possession the vehicle Tata 407 with the goods loaded in it. On the same day, accused Mayank Chaudhary got recovered car Esteem bearing registration No. HR-26-AH-7319 from parking of Parkview Residency. He prepared the site plan

(Ex.PW.14/H/1) of the said car. Accused Mayank Chaudhary was again interrogated. He made disclosure statement Ex.PW.14/K. He was produced before the Ilaqa Magistrate. He made another disclosure statement Ex.PW.14/L stating that he could get the gloves recovered. The gloves were taken into possession vide Ex.PW.14/M. These were produced in the court. He prepared rough site plan (Ex.PW.14/N) of the place of recovery of gloves. He arrested Rahul Ghosh on 07.03.2013 from vehicle bearing registration No. MP-04-CB-4309 in front of Vypaar Kendra Market, Palam Vihar, Gurgaon. He was formally arrested in this case and from search of the vehicle, Rs. 67,000/- in the denomination of Rs. 500/- and one magazine were got recovered. Rahul Ghosh had made disclosure statements Ex.PF and Ex.PW.14/Q and Ex.PF/1. He arrested accused Kejar Verma from the market of Ashok Vihar, Gurgaon, on 07.03.2013. Kejar was driving Ford Figo car bearing registration No. HR-26-BN-8174. It was taken into possession. Kejar made a disclosure statement Ex.PW.14/S. A sum of Rs. 50,000/- was got recovered by Kejar. He also suffered disclosure statements Ex.PW.13/A and Ex.PW.14/U. In his cross-examination, he deposed that he had not gone to the spot, but he had gone to the hospital. They were informed of the incident by the hospital staff. He reached the spot at 6.00 PM. He made the inspection himself. He specifically denied the suggestion that country made pistol was lying at the spot, which was cleverly concealed and removed before arrival of the crime scene team. He denied the suggestion that he obtained signatures of Tarika on few blank papers. He stayed at the spot till 9.00/9.30 PM. Mayank Chaudhary was present with them throughout the proceedings. He was arrested at about 9.50 PM. He had

not checked the luggage in the premises of Safe Packers & Movers. He had checked the same after bringing it to police station. After 5-10 minutes of their arrival in the police station, he made search. He prepared parcel of country made pistol at about 12.00 mid-night. He deposited the parcel with MHC. Rahul was arrested at about 3.40 PM on 07.03.2013 from Vyapaar Kendra Market, Palam Vihar. It was a crowded place. He did not join any independent witness.

17. PW.15 HC Rajbir Singh deposed that accused Mayank Chaudhary was interrogated in his presence on 07.03.2013. His disclosure statement was recorded vide Ex.PW.14/K. He made fresh disclosure statement Ex.PW.14/L stating that he could get the gloves recovered. On 07.03.2013, Inspector Naresh Kumar arrested accused Rahul Ghosh. Car bearing registration No. MP-04-CB-4309 was taken into possession. Accused Kejar Verma was arrested by Inspector Naresh Kumar on 07.03.2013 from the market of Ashok Vihar, Gurgaon. Ford Figo car bearing registration No. HR-26-BN-8174 was recovered from him. In the cross-examination, he stated that no private person was joined in the investigation.

18. PW.16 ASI Pawan Kumar deposed that Inspector Naresh Kumar had taken into possession bed sheet (Ex.P1), pillow with cover (Ex.P2), cushion cover (Ex.P3), wrist watch (Ex.P6), ID card (Ex.P7), one empty case of bullet (Ex.P8) and one bullet lead (Ex.P9) in his presence. The Investigating Officer had also lifted blood from bed with the help of cotton swab. Accused Mayank Chaudhary had got recovered a country made pistol from village Mahipalpur, from a Tata 407 in which household

goods of the house of Rahul Ghosh were being packed and were to be sent to Indore. In his cross-examination he admitted that they had brought the vehicle in the police station. The Investigating Officer had apprised Delhi police staff regarding their purpose of visit and recovery of pistol. He denied that pistol or Esteem car were not recovered.

19. PW.17 Mehar Singh deposed that on 08.03.2013, he was working in packing department of Safe Movers and Packers, Mahipalpur, Delhi. The police came to their premises and checked the packed luggage in truck bearing registration No. HR-61-8250. The entire luggage was opened. No weapon whatsoever was found from the luggage. He also deposed that it was not possible to put the pistol in the luggage. They scan the luggage with detectors. He was declared hostile and was cross-examined by the Public Prosecutor. He denied that on 06.03.2013, he had told the police that in vehicle bearing registration No. HR-61-8250, household items of Rahul Ghosh were packed and that the vehicle was parked in their office at Mahipalpur, Delhi. He was confronted with portion A to A of Ex.PW.17/A, wherein it was so recorded. He further deposed that he did not state before the police that on inspection of the luggage loaded in the truck, one country made pistol and a magazine containing live cartridges were found. He was confronted with portion B to B of Ex.PW.17/A, wherein it was so recorded. He did not state to the police that the police had recovered cheque of ICICI bank amounting to Rs. 16,275/-, which was given by Rahul Ghosh as a fare to them. He was confronted with portion C to C of Ex.PW.17/A, wherein it was so recorded. He had seen recovery memo Ex.PW.14/E. He volunteered that the police obtained his signatures on a few blank papers on the pretext

of requirement for investigation. He identified his signatures at point A on recovery memo Ex.PW.14/F.

20. The Forensic Science Laboratory report is Ex.PX. It reads as under :-

1. The country made pistol marked as W/1 (Chambered for 7.65m cartridges) is a firearm as defined in Arms Act 54 of 1959. Its firing mechanism was found in working order.
2. The 7.65 mm fired cartridge case marked as C/1 and 7.65 mm fired bullet marked as BC/1 have been fired from country made pistol marked as W/1 (recovered from vehicle No. HR-71-8250) and not from any other firearm even of the same make and bore/caliber because every firearm has got its own individual characteristic marks.
3. The holes on the pillow contained in parcel No.1 has been caused by bullet projectile.
4. The magazine marked as M/1 contained in parcel No. IX was found to be a country made magazine for chambering of 7.65 mm cartridges.”

21. According to the FSL report Ex.PY, the blood stains were found on exhibit-1a (cushion), exhibit-1b (bed sheet), exhibit-1c (cushion cover), exhibits-3 and 4 (cotton wool swabs), exhibit-7a (Pyjama), exhibit-7b (underwear) and exhibit-7c (Banian). Blood could not be detected on exhibit-5a (wrist watch) and exhibit-5b (ID card). Traces of blood were too small for its serological analysis to detect blood on exhibit-6 (gloves).

22. DW.1 Dr. Satish Koul deposed that he was working with Columbia Asia Hospital, as a Consultant in Internal Medicine since June, 2008. Patient, namely Anil Chaudhary, was admitted in their hospital on

28.04.2010. The patient was diagnosed of virla encephalitis. He prepared the discharge summary. He produced the record regarding admission dated 28.10.2010. The patient was again admitted in their hospital on 01.07.2011. The patient was treated by him and discharged on 03.07.2011. The patient was again admitted in their hospital on 10.10.2011. He had referred the patient to psychiatrist Dr. Sherry on 11.10.2011. Dr. Sherry had mentioned in her findings that patient was in extreme depression for the last two years. His treatment was started. He was discharged on 15.10.2011. He was again admitted on 01.12.2011 and was discharged on 05.12.2011.

23. The case of the appellants is that Anil Chaudhary had committed suicide. According to them, Anil Chaudhary was in depression. This defence taken by the appellants is not plausible. In case, Anil Chaudhary wanted to commit suicide, he was not supposed to put pillow on his face. The police had taken into possession bed sheet (Ex.P1), pillow with cover (Ex.P2), one cushion cover (Ex.P3), one wrist watch (Ex.P6), ID Card (Ex.P7) and blood swabs from the spot. One empty case of bullet and one lead of bullet were also lifted from the spot. According to the FSL report Ex.PX, pistol was used in the crime. The blood stains were found on the material recovered from the spot. The recovery memos were signed by PW.5 Tarika Chaudhary. She was declared hostile. However, she admitted her signatures on recovery memos. The weapon of offence, i.e. pistol, was got recovered at the instance of Mayank Chaudhary. It was provided to him by Kejar Verma. The blood stained gloves were also recovered at the instance of Mayank Chaudhary.

24. Appellant Mayank Chaudhary has taken the defence that his

father was in depression. No medical record in this regard between 2010 to 2013 was brought on record. Mayank Chaudhary also took plea in his statement recorded under Section 313 Cr.P.C. that one country made pistol was found alongside the body of the deceased. It is contrary to the evidence produced on record by the prosecution. The pistol was recovered vide memo Ex.PW.14/E, at the instance of Mayank Chaudhary, on the basis of his disclosure statement (Ex.PW.14/C), from village Mahipalpur. The recovery was effected from a Tata 407 of Safe Packers and Movers in Mahipalpur, Delhi, in which household goods of the house of Rahul Ghosh were being packed and were to be sent to Indore.

25. The gun was provided by Kejar Verma as per the disclosure statement made by Mayank Chaudhary. Kejar Verma was paid Rs. 50,000/- for providing gun. According to the disclosure statement (Ex.PF) made by Rahul Ghosh, he put pillow on the face of Anil Chaudhary, while he was sleeping. Immediately thereafter, Mayank fired at the face of his father through pillow. Thereafter, he scattered the goods to give impression that the house was burgled. He also stated that he had taken the pistol and tried to send it to Indore through Safe Packers and Movers in Mahipalpur, Delhi. The country made pistol along with magazine and one live cartridge were recovered vide Ex.PW.14/E. Mayank Chaudhary also made disclosure statement Ex.PW.14/L that they had removed Rs. 67,000/- from his flat. The entire amount was kept by Rahul Ghosh and his Ford Figo car bearing registration No. HR-26-BN-8174 was left with Kejar Verma, in which he had brought arms and ammunition. The recovery memo of hand gloves is Ex.PW.14/M. Kejar Verma in his disclosure statement Ex.PW.14/S stated

that Mayank Chaudhary and Rahul Ghosh were his friends. They came to him. They disclosed the plan. They asked him to arrange arms and ammunition for them. He called Mayank Chaudhary and Rahul Ghosh to his house and delivered them country made pistol, two magazines and two live cartridges. In lieu thereof, accused Mayank Chaudhary paid him a sum of Rs. 50,000/- on 03.03.2013. Thereafter, they both took his car bearing registration No. HR-26-AH-7319 with them and they left their own car bearing registration No. HR-26-BN-8174 with him. The currency notes of Rs. 50,000/- were recovered from Kejar Verma vide recovery memo Ex.PW.14/T on 07.03.2013.

26. Anil Chaudhary has been murdered by hatching a conspiracy by the appellants. Mayank Chaudhary had given impression to his sister Tarika Chaudhary that it was an outsider who had entered the house and had escaped with few valuables. It has come on record that Mayank Chaudhary had threatened his sister Tarika Chaudhary (PW.5). However, she had lodged the report. The FIR was also registered against Mayank Chaudhary. Tarika Chaudhary identified her signatures on her statement. She categorically stated that her brother Mayank Chaudhary used to quarrel with her father due to property dispute. The pistol was being sent to Indore. Its recovery was effected from a Tata 407 of Safe Packers and Movers in Mahipalpur, Delhi, in which household goods of the house of Rahul Ghosh were being packed and were to be sent to Indore. PW.4 Saurabh Chaudhary was also declared hostile, but he admitted his signatures on Ex.PW.4/A and Ex.PW.4/B. PW.4 Saurabh Chaudhary and PW.5 Tarika Chaudhary tried to save their brother Mayank Chaudhary. A suggestion was put to the

Investigating Officer that he had concealed the pistol but he denied the same. No plausible reason has been given why the cars were exchanged. The appellants had suffered various disclosure statements, on the basis of which weapon of offence, i.e. pistol, along with magazine was recovered. The cash was also recovered. The vehicles were taken into possession. In their statements recorded under Section 313 Cr.P.C., it is not the case of the appellants that the disclosure statements were obtained from them by using coercion or torture.

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. The prosecution has proved its case against the appellants that they hatched a conspiracy which led to the murder of Anil Chaudhary. There is no reason for us to interfere with the well reasoned judgment and order of the learned trial court. The appeals are, accordingly, dismissed. The judgment dated 22.07.2015 and the order dated 24.07.2015 are upheld.

Appellants Rahul Ghosh and Kejar Verma are on bail. Their bail bonds and surety bonds are cancelled. They are directed to surrender before the concerned Chief Judicial Magistrate within a period of seven days to undergo remaining part of their sentence.

(RAJIV SHARMA)
JUDGE

March 06, 2019
ndj

(KULDIP SINGH)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes