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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

SR. No.314

CRA-S-1032-SB-2002 (O&M)
Reserved on: 17.11.2022
Date of Decision:15.02.2023

Balbir Kaur

...Appellant

Versus

State of Punjab

...Respondent

CRA-S-1035-SB-2002 (O&M)

Kuldeep Singh

...Appellant

Versus

State of Punjab

...Respondent

CORAM: HON'BLE MR. JUSTICE N.S. SHEKHAWAT

Present: Ms. Sumanjit Kaur, Advocate as Amicus Curiae,
for the appellants in both the appeals.

Mr. Vipin Pal Yadav, Addl. A.G. Punjab.

N.S. SHEKHAWAT, J.

The above-mentioned two appeals arise out of the common impugned judgment of conviction and order of sentence dated 05.06.2002 passed by the learned Additional Sessions Judge, Rupnagar, whereby the appellants in both the appeals were convicted and sentenced as under:-

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Offence u/s	Sentence
120-B IPC	Rigorous imprisonment for two years with fine of Rs.500/- each and in default of payment of fine, to further undergo rigorous imprisonment for three months each.
495/114 IPC	Rigorous imprisonment for three years with fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each
496/114 IPC	Rigorous imprisonment for three years with fine of Rs.1,000/- each and in default of payment of fine, to further undergo rigorous imprisonment for six months each.

All the sentences were ordered to run concurrently.

The prosecution story, as it emerges from the report under Section 173 Cr.P.C. is that Jasdip Kaur (it may be noted that in police papers, her name has been mentioned as Jagdip Kaur at some places and Jasdip Kaur at some places) was a student of B.A. II year in a college at Adampur, District Jalandhar. The accused Kuldeep Singh, resident of village Bhagowal, was friend of Gurjinder Singh, brother of complainant-Jasdip Kaur. Accused Kuldeep Singh told Gurjinder Singh about the matrimonial alliance of complainant-Jasdip Kaur and assured him that one person Gurinder Singh s/o Jasmer Singh r/o village Charian, P.S. Sadar, Ropar, District Ropar, is permanently settled in Italy and was currently staying in his village and he was unmarried. On the assurance of accused Kuldeep Singh, parents of complainant married the complainant with accused Gurinder Singh (since proclaimed offender) on 23.02.2000 by way of

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Anand Karaj ceremony. Before the marriage, Jasmer Singh accompanied by his wife Jasmer Kaur, Gurinder Singh and Balbir Kaur and accused Kuldeep Singh had come to the village of the complainant to see her. After the marriage, on 23.02.2000, the complainant was to go to her in-laws house at village Charian, but Gurinder Singh took his bride to the house of accused Balbir Kaur at village Sallapur. Accused Balbir Kaur is the wife of maternal uncle of Gurinder Singh. The complainant alleged that a conspiracy was already hatched in this regard and in the house of Balbir Kaur at Village Sallapur, the complainant came to know that Gurinder Singh was already married with a lady, namely, Jasbir Kaur of village Kubaheri and was having a nine years old son. The complainant asked accused Gurinder Singh about the said marriage, upon which Gurinder Singh, Balbir Kaur and Kuldeep Singh (both appellants/accused) started threatening the complainant. The complainant remained in village Sallapur for 2-3 days, where accused Gurinder Singh (PO) committed rape on the complainant against her wishes. The complainant told Gurinder Singh that he had ruined her life by fraud, upon which Gurinder Singh informed her that he was going back to Italy on 28th/29th February, 2000 and he had played the fraud and she may do whatever she liked. On 26.02.2000, the complainant secretly left Sallapur and reached her village and narrated the entire occurrence to her parents and brother. It was also alleged that the parents of the complainant had given one gold chain weighing one and half tola, one ear-ring weighing one tola, one ring weighing half tola, one bracelet weighing two tolas to accused-Gurinder Singh. The accused also

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took away all the ornaments from the complainant on the first night of the marriage. With these broad averments, a complaint has lodged by the complainant on 29.02.2000 and upon this, a formal FIR Ex.PA/2 was registered at Police Station Sadar Ropar. During the investigation, accused Gurinder Singh left for Italy and was declared as proclaimed offender. The police had presented the final report under Section 173 Cr.P.C. against Jasmer Singh and Jasmer Kaur (parents of Gurinder Singh) and Balbir Kaur and Kuldeep Singh (both appellants/accused).

After the presentation of challan, the accused were charge sheeted under Section 120-B IPC. The accused/appellants were ordered to be charge sheeted under Section 495/114, 496/114, 343, 506, 376 read with Section 109 IPC. The accused pleaded not guilty and claimed trial.

In support of the case of the prosecution, Jasdip Kaur was examined as PW-1. She supported the allegations levelled by her in the FIR Ex.PA/2. However in her cross-examination, she stated that she could not tell the name of the Granthi (Priest), who performed Anand Karaj. Her marriage with Gurinder Singh was not registered. She could produce receipts for purchase of gold given to her in the marriage. She further stated that Balbir Kaur had two sons and two daughters, but she did not know their names. She did not know the name of daughter of Balbir Kaur, who told her about the first marriage of accused Gurinder Singh. They did not see the documents regarding the permanent residency of Gurinder Singh in Italy. Photographs of the marriage were taken. She further stated that she did not know at which time she reached village Sallapur after marriage. She stated

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that it was evening time. Since she had come to Sallapur for the first time, she did not know the route. She was not aware if her parents or brother inquired about the family of Gurinder Singh from his village before the marriage. Before marriage, she had not seen Kuldeep Singh. Before marriage, her parents had taken her consent for the marriage and Kuldeep Singh never talked to her directly. The prosecution further examined PW-2 Gurjinder Singh, brother of the complainant, who deposed on similar lines. However he admitted that the name of Raja was Rajwinder Singh Gill and he came in contact with Rajwinder Singh Gill, when he planned to go to abroad. He further stated that Kuldeep Singh told that they had one vehicle and they should come in the morning. The marriage party came on Maruti car and it was driven by accused Kuldeep Singh. He did not know the name of the owner of the car. PW-3 Gyan Singh, father of the complainant, also supported the case of the prosecution. However in cross-examination, he admitted that the village of accused Kuldeep Singh was also in Ropar District. Kuldeep Singh had no previous acquaintance with him and he had no direct talk with accused Kuldeep Singh. From 26.02.2000 to 29.02.2000, they had been waiting for the accused, but they did not turn up. They had satisfied themselves on the basis of the information given by Kuldeep Singh. The prosecution further examined PW-5 Jasbir Kaur, wife of Gurinder Singh. She stated that about 10 years back, she was married with accused Gurinder Singh (PO). From the marriage, one son namely Jaspreet Singh was born and the child was now living with her father-in-law at village Cherian. Her parents-in-law used to beat her up and turned her out of

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the home. Her husband used to harass her and turned her out about three years back and he was living in Italy. No divorce had taken place between her and her husband. Now she had come to know that her husband Gurinder Singh married complainant Jasdip Kaur on 23.02.2000. The prosecution further examined PW-6 Jarnail Singh, father of Jasbir Kaur and he deposed on similar lines. PW-7 Jatinder Nath, Draftman prepared the site plan Ex.PD under his signatures. The prosecution further examined PW-9 DSP Raminder Singh, who received the complaint Ex.PA from the complainant and it was read over to her and after admitting the contents as correct, she signed it. He made the endorsement Ex.PA/1 and sent it to the police station, on which the FIR Ex.PA/2 was recorded. He conducted the initial investigation in the present matter. The prosecution further examined PW-10 Dr. Dharam Singh, who conducted the medico legal examination on the person of the present complainant.

After the prosecution evidence was completed, the statements of the accused were recorded under Section 313 Cr.P.C. Accused-appellant Balbir Kaur stated in her statement under 313 Cr.P.C. that she had attended the marriage of Gurinder Singh and thereafter she came back to Ropar. They did not go to Sallapur and all the allegations were incorrect and he was falsely involved. Similarly accused-appellant Kuldeep Singh had taken up the defence that accused Gurinder Singh had hired his vehicle and he had been involved in the case falsely. The accused did not lead any evidence to prove their defence.

After the presentation of challan, Jasmer Singh and Jasmer

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Kaur (parents of Gurinder Singh) and Balbir Kaur and Kuldeep Singh (both appellants) were tried by the learned trial Court. However vide the impugned judgment and order passed by learned trial Court, accused Jasmer Singh and Jasmer Kaur (parents of Gurinder Singh) were ordered to be acquitted, whereas the present appellants were convicted and sentenced as mentioned above, leading to the filing of the instant two appeals before this Court.

Learned counsel for the appellants vehemently argued that the appellants have been wrongly convicted under sections 495/114 IPC and 496/114 IPC. In fact, it was necessary for the prosecution to establish that at the time of the offence, accused Gurinder Singh was already married. The prosecution was under a legal obligation to establish that accused Gurinder Singh was already married to PW-5 Jasbir Kaur and later on, he performed second marriage with complainant Jasdip Kaur (PW-1). To prove the said facts, the prosecution was also obliged to show that both the marriages had been duly performed in accordance with the religious rites applicable to the form of marriage of the parties.

The said submissions have been opposed by the learned State counsel on the ground that in the instant case Jasbir Kaur was examined as PW-5. She clearly stated that her marriage was solemnized with accused Gurinder Singh about 10 years back and a son Jaspreet Singh was born out of the said wedlock. She further stated that her husband was living in Italy and no divorce had taken place between her and her husband. She further stated that Gurinder Singh had illegally married Jasdip Kaur, the present

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complainant. Learned State counsel further referred to the cross-examination of PW-5 Jasbir Kaur to contend that even suggestions were put to her to the effect that on 05.02.2000, maintenance was allowed in her favour against Gurinder Singh by the court of learned Additional District Judge, Ropar under Section 24 of the Hindu Marriage Act. She further stated that she had not good relations with her in-laws. These suggestions clearly proved that even the accused side had admitted the factum of marriage of Gurinder Singh with Jasbir Kaur, PW-5 and the findings recorded by learned trial Court in this regard are liable to be upheld by this Court.

I have considered the rival submissions made by learned counsel for the parties and have carefully perused the trial Court record.

It is apt to reproduce Sections 494, 495 and 496 of the Indian Penal Court, which are as under:-

“494. Marrying again during lifetime of husband or wife.—

Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

495. Same offence with concealment of former marriage from person with whom subsequent marriage is contracted.—

Whoever commits the offence defined in the last preceding section having concealed from the person with whom the subsequent marriage is contracted, the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

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496. Marriage ceremony fraudulently gone through without lawful marriage.—Whoever, dishonestly or with a fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

To prove the offence under Section 495 IPC, it is necessary to prove the commission of the offence, as defined under Section 494 IPC. Whenever a person marries again during the life time of husband or wife, such marriage is void by the reason of its taking place during the life of such husband or wife and is a punishable offence. Still further, if such offence is committed by concealing from the person with whom the subsequent marriages contracted, the fact of former marriage, such act shall be a punishable offence under Section 495 IPC. Similarly, where such a person dishonestly or with fraudulent intention, goes through the ceremony of being married, knowing that he is not thereby lawfully married, can be punished under Section 496 IPC.

Apparently, the expression “whoever marries” must mean “whoever marries validly”. To make out an offence under the provisions of Sections 494, 495 and 496 IPC, it must be shown that the accused had validly performed the first marriage with her husband or wife. The bare fact that a man and woman are living as a husband or wife may not give them the status of husband and wife, even though they might portrayed before the society as husband and wife and the society treat them as husband and wife.

Apart from that, the parties in the instant case were governed

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by the provisions of Hindu Marriage Act. Prior to the enactment of Hindu Marriage Act of 1955, there was nothing in Hindu Law which made a second marriage of a male Hindu, during the life time of his previous wife, void. Section 5 of the Hindu Marriage Act provides for the conditions for a Hindu marriage. It clearly lays down that a marriage may be solemnized between any two Hindus, if neither party has a spouse living at the time of marriage. Still further, Section 17 of the Hindu Marriage Act, provides that any marriage between two Hindus solemnized after the commencement of the Act is void, if at the date of such marriage either party had a husband or wife living; and the provisions of Sections 494 and 495 of the IPC shall apply accordingly. Consequently, to hold a marriage between two Hindus void in view of Section 17 of the Hindu Marriage Act, two conditions must be fulfilled, which are as under:

- (a) That the marriage was solemnized after the commencement of the Act of 1955.
- (b) That at the time of such marriage, either party had a spouse living.

Consequently, the prosecution was obliged to prove that the marriage, which took place between Gurinder Singh and PW-5 Jasbir Kaur 10 years ago, was solemnized and unless the solemnisation of the marriage is proved, the second marriage will not be void by virtue of the Section 17 of the Act and the provisions of Sections 494/495 IPC will not apply to such parties to the marriage. The word 'solemnize', as per the Oxford dictionary, means in connection with a marriage, to celebrate the marriage with proper ceremonies and in due form. It can easily be deduced that unless the

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marriage is 'celebrated or performed with proper ceremonies and due form' it cannot be said to be 'solemnized'. Consequently, to attract the provisions of Section 17 of the Hindu Marriage Act as well as Section 494/495 IPC, it has to be proved that the first marriage should have been celebrated with proper ceremonies and the customs applicable to the parties.

In the instant case, it has been alleged that Gurinder Singh, co-accused, was already married to PW-5 Jasbir Kaur and out of the said wedlock, the couple was having a 9 years old child, who was staying with the parents of Gurinder Singh. It was further alleged that during the subsistence of the marriage of Gurinder Singh with Jasbir Kaur, PW-5, Gurinder Singh again married to Jasdip Kaur PW-1, complainant, during the life time of his wife and had committed the offences under Sections 495/496 IPC. The present appellants were ordered to be convicted under Section 495/496 with the aid of Section 114 IPC. However, the prosecution miserably failed to prove that marriage of Gurinder Singh was solemnised with PW-5 Jasbir Kaur. To prove the valid marriage between Gurinder Singh and Jasbir Kaur, PW-5, the prosecution was obliged to demonstrate that the marriage between them was celebrated or performed with proper ceremonies and due form and as per the custom applicable to the parties. Except the bald statements of PW-5 Jasbir Kaur and PW-6 Jarnail Singh, her father, there was no evidence relating to the first marriage between Gurinder Singh and Jasbir Kaur. Their simple assertions regarding marriage were not sufficient to prove the factum of marriage between the parties. Thus, the basic ingredients of the offence under Sections 495/496 IPC were missing in the instant case.

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The learned trial Court wrongly placed reliance on the statements of Jasbir Kaur and her father Jarnail Singh to prove the fact regarding first marriage. The learned trial Court wrongly held that the accused did not dare to deny or controvert the said fact during the cross-examination of the said witnesses. It was held that it was not suggested either to Jasbir Kaur or her father Jarnail Singh that she was not married with accused Gurinder Singh, rather it was suggested on behalf of the accused that on 05.02.2001, maintenance was allowed to her against Gurinder Singh under Section 24 of the Hindu Marriage Act by the Court of learned Additional District Judge, Ropar. In fact, the said findings are wrong and apparently unsustainable in law. The law is well settled that the burden is always on the prosecution to prove the ingredients of the offence alleged against the accused. In the instant case, the prosecution was under a legal obligation to lead sufficient evidence that both the parties had solemnised the marriage in accordance with the proper ceremonies and the customs applicable to the parties. Even otherwise, the suggestions put by the defence counsel to various prosecution witnesses could never take place of the affirmative evidence, which is the bounden duty of the prosecution. Even in absence of positive evidence, the inferences can never be drawn from the suggestions, which are put to the prosecution witnesses by the defence counsel. No doubt if the prosecution has to discharge the initial burden, certainly the suggestions lend corroboration, then in such eventuality, the suggestions put to the prosecution witnesses lend corroboration to such evidence produced by the prosecution.

Still further, it has been held by the Hon'ble Supreme Court in

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the matter of **Smt. Priya Bala Ghosh vs. Suresh Chandra Ghosh**, AIR 1971 SC 1153 as follows:-

14. *In Bhaurao Shankar Lokhande v. State of Maharashtra, (1965) 2 SCR 837, the question arose whether in a prosecution for bigamy under Section 494, I. P. C. it was necessary to establish that the second marriage had been duly performed in accordance with the essential religious rites applicable to the form of marriage gone through the first appellant therein had been convicted for an offence under Section 494 Indian Penal Code for going through a marriage which was void by reason of its taking place during the lifetime of the previous wife. The said appellant contended that it was necessary for the prosecution to establish that the alleged second marriage had been duly performed in accordance with the essential religious rites. The State, on the other hand, contended that for the commission of the offence under Section 494, I. P. C. it was not necessary that the second marriage should be a valid one and a person going through any form of marriage during the lifetime of the first wife would be guilty of the offence. This Court rejected the contention of the State and observed as follows :*

"Prima facie the expression 'whoevermarries' must mean 'whoever.....marries validly' or whoevermarries and whose marriage is a valid one'. If the marriage is not a valid one, according to the law applicable to the parties, no question of its being void by reason of its taking place during the lifetime of the husband or wife of the person marrying arises. If the marriage is not a valid marriage, it is no marriage in the eye of law".

15. Again in interpreting the word "solemnize" in Section 17 of the Act, it was stated:

"The word 'solemnize' means in connection with a

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marriage, 'to celebrate the marriage with proper ceremonies and in due form', according to the Shorter Oxford Dictionary. It follows, therefore, that unless the marriage is 'celebrated or performed with proper ceremonies and due form' it cannot be said to be 'solemnized'. It is therefore essential for the purpose of Section 17 of the Act, that the marriage to which Section 494, I. P. C applies on account of the provisions of the Act, should have been celebrated with proper ceremonies and in due form. Merely going through certain ceremonies with the intention that the parties be taken to be married, will not make them ceremonies prescribed by law or approved by any established custom".

From the above quotations it is clear that if the alleged second marriage is not valid one according to law applicable to the parties, it will not be void by reason of its taking place during the life of the husband or the wife of the person marrying so as to attract Section 494, L P. C. Again in order to hold that the second marriage has been solemnized so as to attract Section 17 of the Act, it is essential that the second marriage should have been celebrated with proper ceremonies and in due form.

16. In the said decision this Court further considered the question whether it has been established that with respect to the alleged second marriage the essential ceremonies for a valid marriage have been performed. After referring to the passage in Mulla's Hindu Law, 12th Edn. at page 615 dealing with the essential ceremonies which have to be performed for a valid marriage, this Court, on the evidence, held that the prosecution had neither established that the essential ceremonies had been performed nor that the performance of the essential ceremonies had been abrogated by the custom governing the community to which the parties belonged. In this view it was held that the prosecution in that case had failed to

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establish that the alleged second marriage had been performed in accordance with the requirement of Section 7 of the Act. The effect of the decision, in our opinion, is that the prosecution has to prove that the alleged second marriage had been duly performed in accordance with the essential religious rites applicable to the form of marriage gone through by the parties and that the said marriage must be a valid one according to law applicable to the parties.

*17. In **Kanwal Ram v. The Himachal Pradesh Admn., (1966) 1/ SCR 539** this Court again reiterated the principles laid down in the earlier decision referred to above that in a prosecution for bigamy the second marriage has to be proved as a fact and it must also be proved that the necessary ceremonies had been performed. Another proposition laid down by this decision, which answers the second contention of the learned counsel for the appellant, is that admission of marriage by an accused is no evidence of marriage for the purpose of proving an offence of bigamy or adultery. On the evidence it was held in the said decision that the witnesses have not proved that the essential ceremonies had been performed.*

18. It was contended that an admission made by the accused regarding the second marriage is conclusive of the fact of a second marriage having taken place and that without any other evidence a conviction could be based on such admission. This Court rejected the said contention stating :

*"...it is clear that in law such admission is not evidence of the fact of the second marriage having taken place. In a bigamy case, the second marriage as a fact, that is to say, the ceremonies constituting it must be proved; **Empress v. Pitambur Singh, (1880) ILR 5 Calcutta 566 (FB)**, **Empress v. Kallu, (1882) ILR 5 Allahabad 233**, Archbold Criminal Pleading Evidence and Practice, (35th ed.) Article 3796. In Kallu's case, (1882) ILR 5*

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Allahabad 233 and in Morris v. Miller, (1767) 4 Burr 2057 : 98 ER 73, it has been held that admission of marriage by the accused is not evidence of it for the purpose of proving marriage in an adultery or bigamy case".

Apart from that, it has been alleged that accused-appellant Kuldeep Singh was known to Gurjinder Singh, brother of Jasdip Kaur (complainant). He assured Gurjinder Singh that accused Gurinder Singh (PO), a resident of village Charian, P.S. Sadar Ropar, was permanently settled in Italy and had currently come to his village and he was unmarried. On the alleged assurance of Kuldeep Singh, the parents of complainant-Jasdip Kaur married her with accused Gurinder Singh on 23.02.2000 through Anand Karaj ceremony. The learned trial Court rightly observed that accused-appellant Kuldeep Singh was not related to Gurinder Singh, accused. Both belonged to different villages. Still further, no knowledge could be imputed to Kuldeep Singh regarding the first marriage of Gurinder Singh and consequently, his second marriage was a crime. Even PW-1 Jasdip Kaur also admitted that Kuldeep Singh never talked to her directly and also admitted in her cross-examination that he did not meet her prior to her marriage. Similarly, PW-3 Gyan Singh, father of the complainant, also admitted in his cross-examination that he had no direct talks with accused-appellant Kuldeep Singh. It has been alleged by PW-2 Gurjinder Singh that accused-appellant Kuldeep Singh had suggested the matrimonial alliance of accused Gurinder Singh with his sister by stating that he was permanent residence of Italy and was unmarried. In fact, accused-appellant Kuldeep Singh belonged to a different village and was not beneficiary of any such

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marriage, which was performed without dowry as per the prosecution. Apart from that, even as per the case of the prosecution, accused-appellant Kuldeep had only suggested the name of the boy to the family of complainant, who were also residents of a nearby village and they had arranged the marriage on his suggestion. Consequently, it can never be stated that the accused-appellant Kuldeep Singh had intentionally aided or abetted to the commission of crime.

Section 107 of the Indian Penal Code defines abetment and the same is reproduced below:-

“107. Abetment of a thing.—A person abets the doing of a thing, who—First.—Instigates any person to do that thing; or Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing”.

Thus, in order to constitute abetment, the abettor must be shown to have “intentionally aided the commission of crime” Mere proof that the crime charged could not have been committed without the intervention of the alleged abettor is not enough compliance with the requirements of Section 107 IPC. A person may, for example, suggest something to his friend or shares some wrong information with someone, it cannot be said that he had abetted the offence. It is not enough that an act on the part of the alleged abettor happens to facilitate the commission of crime. Intentional aiding and therefore active complicity is the gist of the abetment under the provisions of Section 107 IPC.

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In the instant case, the prosecution simply stated that the accused Kuldeep Singh had suggested the alliance of Gurinder Singh for the sister of Gurjinder Singh i.e. Jasdip Kaur (complainant) and had attended the marriage as a part of Baraat and this can never be termed as abetting of the offence of bigamy or other related offences.

Similarly, the ingredients of the offence against Balbir Kaur, the appellant were also completely missing in the instant case. It has been alleged that Balbir Kaur had attended the second marriage of Gurinder Singh with PW-1 Jasdip Kaur (complainant) and after the marriage, the complainant was taken by Gurinder Singh to the house of Balbir Kaur at village Sallapur. It has been alleged that after reaching at village Sallapur, daughters of Balbir Kaur informed Jasdip Kaur, complainant, that Gurinder Singh was already married to Jasbir Kaur and had got nine years old son. However, in her cross-examination, PW-1 Jasdip Kaur stated that Balbir Kaur had two sons and two daughters. Surprisingly the complainant stayed in the house of Balbir Kaur for three days, but she could not disclose their names in her cross-examination. She did not know the name of the daughter of Balbir Kaur, who told her about the first marriage of Gurinder Singh. Still further, she could not tell the route, which was taken to reach Sallapur. Even from her testimony, it is doubtful that she had stayed at the house of Balbir Kaur for three days after her marriage. Still further, it has been alleged that Balbir Kaur had attended the marriage and had abetted the offence. However simply because the accused was present at the time of marriage, it cannot be stated that she had abetted or conspired merely by being present at the time of marriage.

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It has been observed by this Court in **Nafe Singh Vs Mohinder Dass, 2002(1) RCR (Criminal) 538** as under:-

“5. In Smt. Chand Dhawan v. Jawahar Lal and other, 1992 (3) Hon'ble Supreme Court was considering the question about the involvement of the persons who were present at the time of alleged second marriage as accused for the offence under Sections 494 Indian Penal Code. In the reported case, Smt. Chand Dhawan was married to Jawahar Lal on 19.9.1972 and three children were born out of that wedlock and thereafter they started living separately. Proceedings for dissolution of marriage, custody of minor children and criminal prosecution were pending between the parties. In the meantime, Smt. Chand Dhawan filed a criminal complaint for for bigamy, alleging therein that her husband Jawahar Lal had married Shashi Arora on 8.2.1989 and that parents of Jawahar Lal and Shashi Arora in conspiracy, intentionally abetted the performance of second marriage with the full knowledge about the first marriage of Jawahar Lal with Smt. Chand Dhawan complainant. After recording the preliminary evidence the learned Magistrate ordered the summoning of the accused under Sections 494 and 109 Indian Penal Code. Thereupon, Jawahar Lal filed petition under Section 482 Criminal Procedure Code, 1973 before the High Court and the High Court vide order dated 18.3.1991 quashed the complaint and subsequent proceedings. Aggrieved against the said order, Smt. Chand Dhawan, complainant filed appeal before the Hon'ble Supreme Court. After considering various contentions of both the sides, the Hon'ble Supreme Court was of the view that the High Court had clearly erred in reaching the conclusion that the proceedings are liable to be quashed. It was further observed that in the light of allegations made in the complaint and material produced in support of these allegations by the appellant before the Magistrate, the issue of

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process to respondents 1 and 2, who are alleged to have solemnised the second marriage during the subsistence of the earlier valid marriage of the appellant, was proper and when the process had been issued the proceedings had to continue in accordance with law against the respondents 1 and 2. Regarding the other accused, it was held by their Lordships of the Supreme Court that they had been unnecessarily and vexatiously roped in. It was further held that it could not be assumed that they had by their presence or otherwise facilitated the solemnisation of a second marriage with the knowledge that the earlier marriage was subsisting. Accordingly, the appeal was partly allowed and the order with regard to respondents 1 and 2 were set aside and it was held that the complaint should proceed against these two respondents in accordance with law.

Apart from that, the present appellants have also been convicted under Section 120-B IPC. It has been held by the Hon'ble Supreme Court in the matter of **State of Kerala Vs. P Sugathan, AIR 2000 AIR (SC) 3323** as follows:-

“10. Criminal conspiracy is defined under Section 120(a) of the Indian Penal Code as under :

"Definition of criminal conspiracy :

When two or more persons agreed to do, or cause to be done -

(1) an illegal act, or

(2) an act which is not illegal by illegal means,

such an agreement is designated a criminal conspiracy :

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation - It is immaterial whether the illegal act is

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the ultimate object of such agreement, or is merely incidental to that object."

11. Section 120B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted only when the court is satisfied that there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable ground, that is say, there should be a *prima facie* evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in **Bhagwan Swarup Lal Bishan Lal v. State of Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, AIR 1965 Supreme Court 682 Maharashtra, AIR 1965 Supreme Court 682** held that the expression "in reference to their common intention" in Section 10 – is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of" in the English law; with the result, anything, said, done or written by a co-conspirator, after the conspiracy was formed, will be evidence against the other before he entered the field of conspiracy or after he left it. Anything said, done or written is relevant fact only "as against each of the persons believed to be so conspiring as for the purpose of showing that any such person was a party to it". It was further held :

"In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything

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said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

*12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in **V.C. Shukla v. State, 1980(2) SCC 665** held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when take together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference*

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should be prior in time than the actual commission of the offences in furtherance of the alleged conspiracy.

*13. In **Kehar Singh v. State**, AIR 1988 Supreme Court 1883 it was noticed that Section 120A and Section 120B Indian Penal Code have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code.*

*14. After referring to some judgments of the United States Supreme Court and of this Court in **Yash Pal Mittal v. State of Punjab**, 1977(4) SCC 540; **State of Maharashtra v. Som Nath Thapa**, 1996(2) RCR (Criminal) 480 (SC) summarised the position of law and the requirements to establish the charge of conspiracy, as under :*

"The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution

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has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use."

Bearing in mind the above stated principles of law and the basic features of the offence of criminal conspiracy enumerated above, I would advert to the prosecution evidence and the facts of the instant case. To prove the charge under Section 120-B IPC, the prosecution examined three witnesses namely PW-1 Jasdip Kaur, PW-2 Gurjinder Singh and PW-3 Gyan Singh. None of the witness could even suggest that there was a meeting of minds of two or more persons for doing an illegal act or an act by illegal means. No doubt, the direct proof is rarely available to prove the offence of conspiracy, but such offence has to be inferred from the surrounding circumstances and the conduct of the accused. The incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. The offence of criminal conspiracy has to be proved like any other substantive offence. In the instant case, it has been stated that accused Kuldeep Singh had suggested the matrimonial alliance of Gurinder Singh to Gurjinder Singh and on his advice, he proceeded to fix the marriage of his sister Jasdip Kaur (complainant) with Gurinder Singh. Apart from that, there was no other allegation against Kuldeep Singh. As stated above, simply attending the

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marriage of the accused would not make the act punishable. Even otherwise, Gurjinder Singh admitted in his cross-examination that accused Kuldeep Singh had told that he had one vehicle and the marriage party came in a Maruti car, driven by Kuldeep Singh. Further, Kuldeep Singh in his statement under Section 313 Cr.P.C. stated that his car was hired by accused Gurinder Singh for marriage and he attended the marriage of Gurinder Singh as driver. After the marriage, he dropped the Doli and went away. Thus, the defence raised by accused Kuldeep Singh seems probable that his car was hired by Gurinder Singh and he might have accompanied Gurinder Singh as the driver of the car. It is not even the case of the prosecution that Kuldeep Singh was having close relations or proximity with accused Gurinder Singh. Thus, the defence taken by accused Kuldeep Singh also seemed probable. Apart from that, the prosecution further miserably failed to prove the conspiracy between Balbir Kaur, Kuldeep Singh and Gurinder Singh.

In view of the facts and circumstances of the case noted above, it would be highly unsafe to sustain the conviction of the appellants and they are entitled to benefit of doubt. As a consequence thereof, both the appeals succeed and are hereby allowed. The impugned judgment of conviction and order of sentence dated 05.06.2002 passed by the learned Additional Sessions Judge, Rupnagar, are set aside. The bail bonds of both the appellants stand discharged and they may be released from custody, if not on bail and if not required in any other case.

Pending application, if any, is also disposed off, accordingly.

Case property, if any, be dealt with, and, destroyed after the

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expiry of period of limitation. The trial Court record be sent back.

In the end, I record my appreciation for Ms. Sumanjit Kaur, learned Amicus Curiae, who had rendered her able assistance to this Court.

15.02.2023
mks

(N.S. SHEKHAWAT)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO