SUPREME COURT OF INDIA

SAJU

Vs.

STATE OF KERALA

15/11/2000

(K.T.Thomas, R.P.Sethi)

Appeal (crl.) 699 1998

JUDGMENT

SETHI, J.

Ms.Jameela a young muslim woman was found killed on 18.9.1991 by Baiju, allegedly hired killer at Vattolikadavu road after having received stab injuries. PW1, the elder brother of the deceased lodged the First Information Report in Police Station Ayyuampuzha without naming any person as accused. At the time of her death, the deceased was in advance stage of pregnancy. Accused No.1, namely, Biju was arrested on 19.9.1991. The lungi and shirt MOs 12 and 13 respectively worn by him at the time of crime were seized as per Mahazar (P16). After recording his disclosure statement MO1, the weapon of offence was recovered from the bushes where he had allegedly hidden it. Accused No.2 was also arrested in connection with the murder of Ms.Jameela after three days of the occurrence. Upon trial both the accused were found guilty of the offences punishable under Sections 120B and 302 besides Section 109 of the Indian Penal Code. They were sentenced to undergo life imprisonment. The appellant was also imposed a fine of Rs.10,000/- and in case of default, directed to under rigorous imprisonment for two years. Aggrieved by the judgment of the Sessions Court, both the accused persons filed appeal before the High Court which was dismissed on 1.4.1997 vide the judgment impugned in this appeal. This Court on 14.7.1998 dismissed the SLP in so far as it related to Accused No.1, namely, Biju and granted leave only with respect to the appellant Saju. The case of the prosecution is that Jameela, a young unmarried woman of 24 years of age had developed illicit relations with the appellant, with the result that she became pregnant. She insisted that the appellant should marry her but her request was declined on the ground that the marriage was not possible because Jameela and the appellant belonged to different religions. The appellant is stated to have quarreled with the deceased for which Jameela filed a complaint against him at Police Station Ayyuampuzha. Jameela did not accede to the advise of the appellant to have abortion. On the date of occurrence she is stated to have gone to the hospital at about 11 a.m. for a check up and on her way back she visited her sister Amina (PW9) at about 2.30 p.m. After she left the residence of her sister she was fatally stabbed by Accused No.1, Biju who had followed her from the bus stop where she had alighted from the bus. After inflicting the stab injuries the said accused left the place of occurrence. The offence was alleged to have been committed by Accused No.1 in conspiracy with Accused No.2 who wanted to get rid of the deceased. Admittedly there is no eye-witness in the case which the prosecution has sought to prove by leading circumstantial evidence. The Trial Court summed up the circumstances as under: "(1) Jameela and the second accused who were residents of the Kalady Plantation Estate engaged themselves in love affair and had quarreled when the former

disclosed that she was pregnant and she also disclosed about her pregnancy to her mother (PW6) and other close relations like PW9 and 18.

(2) Jameela requested 2nd accused to marry her and that was turned down by second accused because they belonged to different religions.

(3) When the close relatives of Jameela persuaded second accused to marry Jameela since she became pregnant through him, second accused proclaimed that she would not allow Jameela to deliver the child. Second accused manhandled Jameela in connection with this dispute and that was seen by her neighbours and there was also involvement of the police.

(4) The conduct of the accused on the fateful day (both accused were seen together on the date of occurrence by several persons and from PW. 11's tea shop they had taken food.

(5) A1 was seen washing his face and hands at the thodu near to the place of occurrence by PW 6 at about the time of occurrence and dress worn by him on that date have been recovered and identified as MOs 12 and 13.

(6) First accused was seen at about 3 p.m. on the date of occurrence while he was going through Kappelappalli by persons like PW17.

(7) Recovery of MO1 as a result of information given by first accused from the bushes where it was hidden and very near to the place of occurrence.

(8) Recovery of MO 25 footwears (Hawai Chappals) from the place of occurrence and identified as similar to the one purchased by first accused from the shop of PW 14 few days prior to the date of occurrence.

(9) Immediately after the incident the accused were absconding and arrest of first accused on 19.9.1991 by PW 22 from the place he was hiding."

According to the prosecution the injuries found on the person of the deceased were caused by Accused No.1, Biju with the weapon of offence seized in the case at his instance consequent upon his disclosure statement. His conviction and sentence has already been upheld by this Court while dismissing the SLP filed by him. The appellant has been found guilty and convicted of offences under Section 302 read with Section 120B and Section 119 of the IPC. It may be reiterated that there is no direct evidence either regarding abetment or the criminal conspiracy attributable to the appellant. Both the offences are held to be proved on the basis of circumstantial evidence. To prove the charge of criminal conspiracy the prosecution is required to establish that two or more persons had agreed to do or caused to be done, an illegal act or an act which is not illegal, by illegal means. It is immaterial whether the illegal act is the ultimate object of such crime or is merely incidental to that object. To attract the applicability of Section 120B it has to be proved that all the accused had the intention and they had agreed to commit the crime. There is no doubt that conspiracy is hatched in private and in secrety for which direct evidence would rarely be available. It is also not necessary that each member to a conspiracy must know all the details of the conspiracy. This Court in Yash Pal Mittal v. State of Punjab [AIR 1977 SC 2433] held: "The offence of criminal conspiracy under S.120A is a distinct offence introduced for the first time in 1913 in Chapt.V-A of the Penal Code. The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co- conspirators in the main object of the conspiracy. There may be so many devices and techniques adopted to

achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes mis-fire or over-shooting by some of the conspirators. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others it will not affect the culpability of those others when they are associated with the object of the conspiracy. The significance of criminal conspiracy under S.120A is brought out pilthily by this Court in EG Barsay v. The State of Bombay (1962) 2 SCR 195 at p.229 thus:

"The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under S.43 of the Indian Penal Code, an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may be liable".

We are in respectful agreement with the above observations with regard to the offence of criminal conspiracy."

In a criminal case the onus lies on the prosecution to prove affirmatively that the accused was directly and personally connected with the acts or omissions attributable to the crime committed by him. It is settled position of law that act or action of one of the accused cannot be used as evidence against other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the Court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other. This Court in Kehar Singh & Ors. v. The State (Delhi Admn.) [AIR 1988 SC 1883] has held: "Section 120A provides for the definition of criminal conspiracy and it speaks of that when two or more persons agree to do or cause to be done an act which is an illegal act and S.120-B provides for the punishment for a criminal conspiracy and it is interesting to note that in order to prove a conspiracy it has always been felt that it was not easy to get direct evidence. It appears that considering this experience about the proof of conspiracy that S.10 of the Indian Evidence Act was enacted. Section 10 reads:

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

This section mainly could be divided into two: the first part talks of where there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, and it is only when this condition precedent is satisfied that the subsequent part of the section comes into operation and it is material to note that this part of the Section talks of reasonable grounds to believe that two or more persons have conspired together and this evidently has reference to S.120-A where it is provided "When two or more persons agree to do, or cause to be done". This further has been safeguarded by providing a proviso that no agreement except an agreement to commit an offence shall amount to criminal conspiracy. It will be therefore necessary that a prima facie case of conspiracy has to be established for application of S.10. The second part of Section talks of anything said, done or written by any one of such persons in reference to the common intention after the time when such intention was first entertained by any one of them is relevant fact against each of the persons believed to be so conspiring as well for the purpose for proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it. It is clear that this second part permits the use of evidence which otherwise could not be used against the accused person. It is well settled that act or action of one of the accused could not be used as evidence against the other. But an exception has been carved out in S.10 in cases of conspiracy. The second part operates only when the first part of the section is clearly established i.e. there must be reasonable ground to believe that two or more persons have conspired together in the light of the language of S.120A. It is only then the evidence of action or statements made by one of the accused, could be used as evidence against the other. In Sardar Sardul Singh Caveeshar v. State of Maharashtra (1964) 2 SCR 378, Subba Rao, J. (as he then was) analysed the provision of S.10 and made the following observations:

"This section, as the opening words indicate will come into play 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 wrong, that is to say, there should be a prima facie evidence that a person was a party to the conspiracy before his acts can be used against his co-conspirators. Once such a reasonable ground exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was entertained, is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall have reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression in reference to their common intention 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. Another important limitation implicit in the language is indicated by the expressed scope of its relevancy. Anything so said, done or written is a relevant fact only 'as against each of the person believed to be so conspiring as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it'. It can be used only for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be said in favour of the other party or for the purpose of showing that such a person was not a party to the conspiracy. 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 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; (5) it can only be used against a co- conspirator and not in his favour."

It was further held:

"From an analysis of the section, it will be seen that Sec.10 will come into play 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. There should be, in other words, a prima facie evidence that the person was a party to the conspiracy before his acts can be used against his co-conspirator. One such prima facie evidence exists, anything said, done or written by one of the conspirators in reference to the common intention, after the said intention was first entertained, is relevant against the others. It is relevant not only for the purpose of proving the existence of conspiracy, but also for proving that the other person was a party to it. It is true that the observations of Subba Rao, J. in Sardul Singh Caveeshar v. State of Maharashtra, (1964) 2 SCR 378 lend support to the contention that the admissibility of evidence as between co-conspirators would be liberal than in English Law. The learned Judge said (at 390):

"The evidentiary value of the said acts is limited by two circumstances, namely, that the acts shall be in reference to their common intention and in respect of a period after such intention was entertained by any one of them. The expression "in reference to their common intention" is very comprehensive and it appears to have been designedly used to give it a wider scope than the words "in furtherance of " in 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...."

But, with respect, the above observations that the words of Sec.10 have been designedly used to give a wider scope than the concept of conspiracy in English Law, may not be accurate. This particular aspect of the law has been considered by the Privy Council in Mirza Akbar v. King Emperor, AIR 1940 PC 176 at p.180, where Lord Wright said that there is no difference in principle in India Law in view Sec.10 of the Evidence Act.

The decision of the Privy Council in Mirza Akbar's case has been referred to with approval in Sardul Singh Caveeshar v. State of Bombay, 1958 SCR 161 at p.193: (AIR 1957 SC 747 AT P.760) where Jagannadhadas, J., said:

"The limits of the admissibility of evidence in conspiracy case under S.10 of the Evidence Act have been authoritatively laid down by the Privy Council in Mirza King v. King Emperor (supra). In that case, their Lordships of the Privy Council held that S.10 of the Evidence Act must be construed in accordance with the principle that the thing done, written or spoken was something done in carrying out the conspiracy and was receivable as a step in the proof of the conspiracy. They notice that evidence receivable under S.10 of the Evidence Act of "anything said, done or written, by any one of such persons" (i.e. conspirators) must be "in reference to their common intention". But their Lordships held that in the context (notwithstanding the amplitude of the above phrase) the words therein are not capable of being widely construed having regard to the well- known principle above enunciated."

In Suresh Chandra Bahri v. State of Bihar [AIR 1994 SC 2420] this Court reiterated that the essential ingredient of criminal conspiracy is the agreement to commit an offence. After referring to

the judgments in NMMY Momin v. State of Maharashtra [AIR 1971 SC 885] and State (Delhi Admn) v. V.C. Shukla [AIR 1980 SC 1382] it was held in S.C. Bahri's case (Supra) as under: "A cursory look to the provisions contained in S.120-A reveal that a criminal conspiracy envisages an agreement between two or more persons to commit an illegal act or an act which by itself may not be illegal but the same is done or executed by illegal means. Thus the essential ingredient of the offence of criminal conspiracy is the agreement to commit an offence. In a case where the agreement is for accomplishment of an act which by itself constitutes an offence, then in that event no overt act is necessary to be proved by the prosecution because in such a fact situation criminal conspiracy is established by proving such an agreement. In other words, where the conspiracy alleged is with regard to commission of a serious crime of the nature as contemplated in S.120-B read with the provisio to sub-sec.(2) of S.120-A of the IPC, then in that event mere proof of an agreement between the accused for commission of such a crime alone is enough to bring about a conviction under S.120-B and the proof of any overt act by the accused or by any one of them would not be necessary. The provisions in such a situation do not require that each and every person who is a party to the conspiracy must do some overt act towards the fulfilment of the object of conspiracy, the essential ingredient being an agreement between the conspirators to commit the crime and if these requirements and ingredients are established the act would fall within the trapping of the provisions contained in S.120-B since from its very nature a conspiracy must be conceived and hatched in complete secrecy, because otherwise the whole purpose may frustrate and it is common experience and goes without saying that only in very rare cases one may come across direct evidence of a criminal conspiracy to commit any crime and in most of the cases it is only the circumstantial evidence which is available from which an inference giving rise to the conclusion of an agreement between two or more persons to commit an offence may be legitimately drawn."

It has thus to be established that the accused charged with criminal conspiracy had agreed to pursue a course of conduct which he knew leading to the commission of a crime by one or more persons to the agreement, of that offence. Besides the fact of agreement the necessary mens rea of the crime is also required to be established. In the instant case the hatching of conspiracy between the accused persons has been sought to be proved on the ground that as the deceased had declined to get the pregnancy aborted, the appellant wanted to get rid of her, suggesting the existence of circumstance of motive. Another circumstance relied upon by the prosecution is that both the accused were seen together on the date of murder near or about the place of occurrence. Some conversation is also stated to have taken place between the accused persons, the contents of which are neither disclosed nor suggested. Accused No.1 alone was found to have boarded the bus in which the deceased was travelling and alighted from it along with her. Regarding the circumstance relating to the existence of motive, PW9 who is the sister of the Ms.Jameela deposed that the deceased had told her that the pregnancy conceived by her was through the appellant. According to her the appellant admitted the paternity of conceived child in the initial stage but denied the paternity attributed to him six months thereafter. The trial court found that "in the answers elicited in the further cross-examination also it would appear that her version about the first source of knowledge about the pregnancy of Jameela was inconsistent and unnatural". Dealing with her statement, the trial court observed that PW9 had no occasion to meet Jameela as she was not visiting her mother's house and also because the second accused had consented for the marriage. The only evidence regarding the appellant being responsible for the conception of the child is the testimony of Nabeesa (PW6), the mother of the deceased. She had stated that she came to know about the pregnancy of Jameela only when she tried to fix her marriage with some person and Jameela told her that she was in love with the appellant. It is not discerned from the testimony of PW6 that Jameela had conceived the child from the appellant. What the witness stated was only that Jameela and the appellant were in love and they knew each

other for a period of two years before the death of Jameela. According to her the marriage between the deceased and the appellant could not be solemnised as they belonged to different religions. She never saw the deceased and the appellant talking as according to her they used to talk only in her absence. The appellant is stated to have visited the house of the aforesaid witness on 15.5.1991 and assaulted the deceased regarding which report Exhibit P-4 was lodged. According to her Jameela was killed while returning from the hospital where she had gone for a check up. Nowhere in her testimony Nabeesa (PW6) stated that the appellant wanted the child, conceived by Jameela, to be aborted. There is no positive evidence proving or suggesting that the appellant was responsible for the pregnancy of the deceased. In the absence of evidence regarding the circumstance attributing the pregnancy of the deceased to the appellant and his insistence for abortion of the child, the important circumstance of motive cannot be held to have been proved. The trial court, therefore, rightly did not rely upon the testimony of PW9 Amina with respect to the existence of the said circumstance. The testimony of PW18 Meharban who is the sister-in-law of the deceased also does not inspire confidence to link the appellant with the pregnancy of the deceased. PW2 who is the neighbour of the deceased stated that she had known about the pregnancy from Jameela herself. According to her the appellant had quarreled with Jameela in connection with the pregnancy. Despite denial of the appellant Jameela was stated to have asserted that she did not have sexual intercourse with anyone other than the appellant. In her cross-examination the witnesses stated that the appellant never threatened Jameela. She admitted that the appellant had apparently told Jameela that he was not the father of the child in her womb. The witness conceded that she had no direct knowledge about the relationship of the deceased with the appellant. PW3 who is a neighbour and husband of PW2 was declared hostile as he did not support the case of the prosecution. It was deposed by him that he was not aware that Jameela had requested the appellant to marry her. PW2 stated that the appellant had categorically stated that he was not responsible for the pregnancy as someone-else was responsible for it. The courts below, therefore, were not justified in holding this circumstance proved for the existence of criminal conspiracy to commit the crime of murder of the deceased. In the absence of any evidence suggesting the existence of a circumstance of insistence by the appellant for abortion, an important link in the chain of circumstances attributed against him is missing. Even otherwise motive by itself cannot be a proof of conspiracy. In Girja Shankar Misra v. State of U.P. [AIR 1993 SC 2618] though it was found that there were serious misunderstanding between the deceased and the appellant because of the illicit relationship between the appellant and the wife of the deceased, yet the Court held that despite the fact that the appellant had a motive, he could not be held responsible for hatching a conspiracy. The other important circumstance relied by the prosecution and believed both by the trial and the High Court is the presence of the appellant in the company of Accused No.1 near or about the place of occurrence on the date of incident. It is true that a number of witnesses have deposed that they had seen both the accused together on the date of occurrence but it is equally true that such meeting was not unusual as admittedly they were working together in the plantation. Mere meeting would by itself not be sufficient to infer the existence of a criminal conspiracy. There is no suggestion, much less legal evidence to the effect that both the accused were so intimate which would have compelled Accused No.1 to agree to be a conspirator for the killing of the deceased at the instance of the appellant. The Accused No.1 is also not stated to be a habitual criminal. There is no suggestion of the accused No.1 being hired for the purpose of killing the deceased. Ramakrishnan (PW3) did not support the case of the prosecution of having seen both the accused sitting and talking to each other near the bushes on the day of occurrence. To a specific question as to whether he had seen any other person going through the road towards the side where Accused No.1 had gone, the witness emphatically replied in the negative. Davis (PW5) stated that on the date of occurrence he had seen Accused No.1 at about 2o clock in the afternoon. In reply to a question as to whether he had seen anyone-else going through the road while Accused No.2 was

talking to PW4, the witness replied "I have not noticed". Nabeesa (PW6) who is the mother of the deceased has stated that on the date of occurrence both the accused were sitting near her house on some timber logs at about 2 p.m. but at 2.45 p.m. she saw only Accused No.1 washing his knife near the stream which is on the southern side of her house. What happened between 2.00 p.m. to 2.45 p.m. is not known to the witness. Her deposition is mainly with respect to the relationship of the deceased with the appellant. Jose (PW7) stated in the trial court that on the date of occurrence at about 2.45 p.m., the appellant had called him. He told him to come after some time. He went there and talked to the appellant, George (PW8) and Mohanan (PW10). He saw Jameela, deceased getting down from the bus at about 2.30 p.m. She had gone to the house of her sister Amina (PW9). He did not see Accused No.1 with Accused No.2. He saw only the appellant, PW8, PW10 and some other people. George PW8 stated that he saw appellant on the date of occurrence at about 2.30 p.m. at the gate of his house. Both the witness and the appellant had conversation on the steps of the house of the witness. Appellant was there for about half an hour. This statement of PW8 belies the averments of other witnesses that the appellant committed the crime in conspiracy with Accused No.1 at about 2.45 p.m. Amina (PW9), the sister of the deceeased stated that she had seen both the accused together sitting on the timber log near the road. She did not see appellant accompanying the accused No.1 thereafter. Devasi (PW11) Stated that on the day of occurrence both the accused had come to his shop at about 1 p.m. and each had one plate tapioca and meat. Meharban (PW18) stated "I saw Accused No.2 at 2.30 p.m. at the timber log. I did not see accused No.1. I saw A-2 calling PW-7 Jose. Then I saw he was talking with PW-8 George. That was about 2.45 in the afternoon. I saw A-1 following Jameela when she alighted the bus. Then I saw A-1 swiftly walking from eastern side to western side". This statement of the prosecution witness does not suggest, even by implication that both the accused were together on the day of occurrence. The statement of the witnesses noticed hereinabove may probabilise the presence of both the accused together but does not prove beyond doubt that they were together near the road at the place of occurrence on the fateful day. Assuming they were together, would not necessarily lead to the conclusion that they had met in furtherance of the conspiracy to murder the deceased. We are of the opinion that the prosecution did not succeed in proving this circumstance beyond reasonable doubt. Conviction of the appellant on the basis of the existence of the alleged circumstance cannot be justified. The appellant is entitled to the benefit of the reasonable doubt. The High Court was, therefore, not justified to hold that the accused persons had been seen together before and after the incident when Jameela boarded the bus for the Hospital and alighted at the bus stop around 2.30 p.m. The High Court was also not justified to hold that there was no particular reason for them to be together except as stated by the prosecution. It has come in the prosecution evidence that the witnesses and the accused were plantation workers and would usually meet each other. In the absence of the existence of circumstances suggesting the hatching of criminal conspiracy, we are of the opinion that the appellant could not have been convicted and sentenced with the aid of Section 120B or Section 109 IPC. No fact or circumstance with respect to the abetment attracting the applicability of Section 109 IPF has been brought to our notice. To prove the charge of abetment, the prosecution is required to prove that the abettor had instigated for the doing of a particular thing or engaged with one or more other person or persons in any conspiracy for the doing of that thing or intentionally aided by an act of illegal omission, doing of that thing. The prosecution miserably failed to prove the existence of any of the ingredients of Section 107 IPC. Learned counsel appearing for the respondent-State submitted that after the dismissal of the appeal of Accused No.1, the charge of conspiracy against the appellant should be deemed proved. We are not impressed with such a submission particularly when the prosecution had alleged that the said accused had committed the crime of murder by stabbing the deceased with his knife. Merely because the charge of conspiracy fails against the appellant, it cannot be said that the conviction and sentence awarded to the Accused No.1 was illegal. This Court in Babu Singh v. State

of Punjab [JT 1996 (9) SC 753] held that in a case where two accused were alleged to have conspired and killed their younger brother, the acquittal of one would not entitle the other accused to be acquitted. The Court observed: "Consequently, it was held that the prosecution failed to establish the charge of conspiracy. But merely because the charge of conspiracy failed, the prosecution case so far as the actual assault being given by appellant Babu Singh cannot be ipso facto thrown away."

In view of what has been held hereinabove, we are inclined to hold that the prosecution did not prove the charge of conspiracy against the appellant beyond all reasonable doubt. We are of the opinion that the appellant is entitled to the benefit of reasonable doubt existing in the case. The appeal is accordingly allowed and the impugned judgment of the trial as well as of the High Court, in so far as it relates to the appellant, is set aside and the appellant is acquitted of the charges for which he was convicted and sentenced. The appellant shall be set at liberty forthwith unless required in some other case.