

SUPREME COURT OF INDIA

Gulam Sarbar

Vs.

State of Bihar (Now Jharkhand)

Crl.A.No.1316 of 2012

(Dr.B.S.Chauhan and S.A.Bobde JJ.)

07.10.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 22.3.2012 passed by the High Court of Jharkhand at Ranchi in Criminal Appeals (DB) Nos. 273 of 1998 (R) and 262 of 1998 (R) affirming the judgment and order of conviction and sentence dated 26.8.1998 and 31.8.1998 respectively passed by the 3rd Additional Sessions Judge, Dhanbad in Sessions Trial No. 112 of 1997, by which and whereunder, the appellants in both these appeals stood convicted alongwith others, namely, Binod Kumar, Asgar Mian @ Asgar Ansari, Paiki Ramm @ Poki Ramm and Mantu Das under Sections 302 read with 120- B of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC') and sentenced to undergo RI for life.

2. Facts and circumstances giving rise to these appeals are that:

A. As per the case of the prosecution, Dr. Gopal Prasad Sinha (PW.7), informant/complainant was going alongwith Sant Kumar Sinha (deceased), to Rajganj, Dhanbad on his motorcycle at about 8.00 P.M. on 6.9.1996. When they reached near Sant Nirankari Chowk, they saw a scooter and a motorcycle parked at the side of the road and six persons including the appellants were standing in the close proximity thereof, and they signalled the complainant to stop. The complainant stopped his motorcycle and enquired as to why they were waiting. But within no time, Yakub Ansari and Dhiren Mahto - appellant took out their pistols from their waist and pointed

towards them and asked why Sant Kumar Sinha (deceased) was disturbing the working of the institute run by Binod Kumar. They threatened Sant Kumar Sinha (deceased) to remain away from the institute. Sant Kumar Sinha (deceased) asked the accused persons how they were related to running the affairs of the institute, which led to an exchange of hot words between the deceased and the accused persons. Accused Asgar started inflicting blows by means of a knife and told his companions to complete the task for which they had come. Immediately, Yakub opened fire at point blank range from his revolver on the left side of the neck of Sant Kumar Sinha (deceased) due to which the deceased collapsed and died immediately. The informant/complainant being scared ran away from the place of occurrence, leaving his motorcycle at the spot. He met a police party to whom he narrated the incident. On the basis of the Fardbeyan of the informant, a case under Sections 302/120- B/379 IPC and Section 27 of the Arms Act, 1959 (hereinafter referred to as the 'Arms Act') against the accused, including both the appellants, was registered vide FIR No. 175 of 1996. Thus, the investigation ensued accordingly.

B. After the conclusion of the investigation, a charge sheet was filed against all the accused, showing Yakub @ Ayub as an absconder. Accordingly, the trial vide S.T. No. 112 of 1997 commenced. The co- accused Yakub @ Ayub was apprehended later and was tried separately vide S.T. No. 405 of 1998.

C. In order to prove its case, the prosecution examined eight witnesses including Mithilesh Kumar Sinha (PW.1) – real brother of the deceased, Arvind Kumar (PW.2) – cousin of deceased, Dr. Dhiraj (PW.6), who conducted the post-mortem examination, Dr. Gopal Prasad Sinha (PW.7), informant/complainant and brother of deceased and Jagdish Prasad (PW.8), the Investigating Officer.

D. The defence also examined three witnesses. Gurpreet Singh Mittal (DW.1), was examined only to prove that there was no light in Sant Nirankari Bhawan at the relevant point of time, and further to show that Nirankari Chowk was at a distance of about 200-250 feet away from Nirankari Bhawan. Vijay Kumar Singh (DW.2) and Suresh Dass (DW.3) were merely formal witnesses.

E. As per the case of the prosecution, Gulam Sarbar, appellant ran away on Yakub's motorcycle after the incident. He was chased by the police and

arrested at a short distance from the place of occurrence after he jumped a police barricade.

F. Similarly, Dhiren Mahto left the place of occurrence on LML Vespa Scooter alongwith Asgar Mian. So far as Dhiren Mahto (appellant) is concerned, he was arrested after a few days on secret information of his presence at Naya Bazar. At the time of raid, the said appellant tried to run away on the scooter after seeing the police but was chased and captured near Bartad.

G. In his statement under Section 313 of Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.`), Gulam Sarbar simply denied all allegations against him and even denied his presence at the place of occurrence. Dharendra Chandra Mahto denied his involvement by any means in the murder of Sant Kumar Sinha (deceased) stating that he had nothing to do with the main accused Binod Kumar. He was a small contractor, however, he did not deny his presence at the place of occurrence nor that he had run away on the scooter taking away Asgar Ansari as pillion rider.

H. After considering the material on record, the trial court vide its judgment and order dated 31.8.1998 convicted both the appellants under Sections 302 and 120-B IPC alongwith other accused and sentenced as referred to hereinabove but acquitted Dharendra Chandra Mahto of the charge under Section 27 of the Arms Act.

I. Aggrieved, they preferred appeals alongwith others before the High Court which stood dismissed by the impugned judgment and order dated 22.3.2012.

Hence, these appeals.

3. Shri Amarendra Sharan, learned senior counsel appearing on behalf of Gulam Sarbar and Shri Ashok K. Srivastava, learned senior counsel appearing on behalf of Dhiren Mahto, have submitted that there is no material on record to prove the existence of a conspiracy to kill Sant Kumar Sinha (deceased); none of these appellants was involved in the affairs of the institute for which there was some dispute between Sant Kumar Sinha (deceased) and Binod Kumar (accused). In fact, both of them had been running a institute jointly and one Shipra Sen Choudhery was working as a clerk in the institute with whom Binod Kumar (accused) developed illicit relationship which was not liked by Sant Kumar Sinha (deceased),

who tried to persuade Binod Kumar (accused) not to continue that relationship but he was not willing to give up the same. Sant Kumar Sinha (deceased) also informed the wife of Binod Kumar (accused) about this relationship and there was a quarrel between Shipra Sen Choudhery and Binod Kumar's wife over the same. Earlier, Binod Kumar had opened a new institute and made Shipra Sen Choudhery its Director. However, none of these appellants were involved in the entire episode. Even the arrest of Gulam Sarbar from a place near to the place of incident is doubtful. Had it been so, the FIR which was registered after the arrest of Gulam Sarbar, would contain such facts. Even the general diary did not mention what the distance was between the police station and the place from where Gulam Sarbar, appellant, was arrested. The investigation had not been conducted properly and fairly. The witnesses, particularly, Mithilesh Kumar Sinha (PW.1) and Arvind Kumar (PW.2) not being eye-witnesses could not be relied upon. No independent witness was examined by the prosecution to prove the arrest of any of the appellants nor to prove alleged recoveries of the motor cycle and the scooter in the case. The prosecution case is based on speculation and conjecture thus, the appeals deserve to be allowed and the judgment and order of the courts below are liable to be set aside.

4. Per contra, Shri Ratan Kumar Choudhuri and Shri Krishnanand Pandeya, learned counsel appearing on behalf of the State, opposed both these appeals contending that there are concurrent findings of facts and that both accused persons were well acquainted with Binod Kumar, the main accused, and had been seen by the witnesses and particularly by Dr. Gopal Prasad Sinha (PW.7) in the institute owned by Binod Kumar, accused, prior to the incident. Their presence on the spot and the manner in which they had parked their vehicles and stopped the motorcycle on which the complainant and deceased were travelling is enough to prove the conspiracy. There is no improvement or embellishment in the case of the prosecution against any individual accused. The evidence has rightly been appreciated by the courts below and ocular evidence is corroborated by the medical evidence. Thus, the appeals lack merit and are liable to be dismissed.

5. The essential ingredients of Criminal Conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence.

The offence takes place with the meeting of minds even if nothing further is done. It is an offence independent of other offences and punishable separately. Thus, the prosecution is required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of proving criminal misconduct on the part of an accused. Criminal conspiracy is generally hatched in secrecy thus direct evidence is difficult to obtain or access. The offence can be proved by adducing circumstantial evidence or by necessary implication. Meeting of minds to form a criminal conspiracy has to be proved by adducing substantive evidence in cases where circumstantial evidence is incomplete or vague. The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them between the parties. Agreement is essential. (Vide: *Kehar Singh & Ors. v. State (Delhi Admn.)*, AIR 1988 SC 1883; *State (NCT of Delhi) v. Navjot Sandhu @ Afsan Guru*, AIR 2005 SC 3820; *Mir Nagvi Askari v. CBI*, AIR 2010 SC 528; *Baldev Singh v. State of Punjab*, (2009) 6 SCC 564; *State of M.P. v. Sheetla Sahai & Ors.*, (2009) 8 SCC 617; *R. Venkatkrishnan v. CBI*, AIR 2010 SC 1812; and *S.Arul Raja v. State of T.N.*, (2010) 8 SCC 233).

6. In *Mohmed Amin @ Amin Choteli Rahim Miyan Shaikh & Anr. v. CBI*, (2008) 15 SCC 49, it was held that in order to come under this provision it is not necessary for the accused to know the detailed stages of conspiracy; mere knowledge of main object/ purpose of the conspiracy would suffice for this Section.

Similarly, in *Vikram Singh & Ors. v. State of Punjab*, AIR 2010 SC 1007, this Court dealt with a case where the accused had purchased fortwin injection and chloroform. Thus, it was held that since the purchase of these materials was an initial step towards commission of offence, the presence of co-accused Sonia, though not referred to by the witnesses at the time of actual kidnapping would not imply that she was not privy to conspiracy and conviction of the accused under Section 120-B IPC was upheld.

7. The evidence on record and particularly the deposition of Dr. Gopal Prasad Sinha (PW.7) clearly depicts the conspiracy from the manner in which the appellants and other accused were present on the crossing and stopped the complainant and the deceased. Admittedly, there was rivalry and ill-will between Binod Kumar (accused) and Sant Kumar Sinha (deceased) as they had separated their business of running of educational institution and Sant Kumar Sinha did not like the illicit relationship between Binod Kumar (accused) and Shipra Sen

Choudhery, Clerk. Sant Kumar Sinha (deceased) tried to persuade Binod Kumar (accused) to desist from the said illicit relationship and Sant Kumar Sinha (deceased) also revealed this fact to the wife of Binod Kumar (accused) and there was not only a verbal fight between the wife of Binod Kumar and Shipra Sen Choudhery but also a scuffle between them on this issue and, subsequently, the wife of Binod Kumar began living separately. Therefore, relations between Binod Kumar (accused) and Sant Kumar Sinha (deceased) had definitely been strained.

8. Both these appellants and other accused were acquainted with Binod Kumar (accused) as well as Sant Kumar Sinha (deceased) and were also known to Dr. Gopal Prasad Sinha (PW.7). They had been seen earlier in the institute with Binod Kumar (accused).

9. The evidence of Dr. Gopal Prasad Sinha (PW.7) that Gulam Sarbar had run away with the accused Yakub @ Ayub on black coloured Kawasaki motorcycle and had been arrested within a close vicinity of the place of incident, though Yakub successfully escaped, inspires confidence. The names of the appellants and other accused had been mentioned in the FIR. In such a fact-situation, not mentioning that Gulam Sarbar had been arrested in the FIR is of no significance. The LML Vespa Scooter BR17-B-4455 used in the crime was seized in the presence of independent witnesses, namely, Sunil Mandal and Santosh Vikral. The seizure memo was prepared on which both the said panch witnesses put their signatures. The same was marked as Exhibit 6-1 and was proved by Jagdish Prasad (PW.8), Investigating Officer. In respect of the arrest of Gulam Sarbar, Jagdish Prasad (PW.8) has clearly deposed that he was inspecting small vehicles in front of the police station alongwith Constable Badre Alam at about 20.05 hrs., when he saw two persons on one black coloured Kawasaki motorcycle crossing the barrier at a very high speed. They were given signal to stop but they did not stop. On the contrary, they pushed the barrier and fled away on which Jagdish Prasad (PW.8) and Constable Badre Alam chased them. Gulam Sarbar jumped from the motorcycle near Bartand Pulia and tried to flee but was controlled and captured by them and upon interrogation, he revealed that Yakub was the person who had run away on the motorcycle. Jagdish Prasad (PW.8) I.O. received secret information that the motorcycle used in the crime had been hidden in the house of Yakub (accused). A search was conducted of his house in presence of two independent witnesses, namely, Muslim Ansari and Bhagirath Razak and the same was recovered. A seizure memo was prepared and was signed by the said two witnesses. The said seizure memo was marked as Exhibit - 6 and proved by Jagdish Prasad (PW.8), Investigating Officer.

10. Jagdish Prasad (PW.8) deposed that he received secret information about the whereabouts of the appellant Dhiren Mahto and he conducted raid at Naya Bazar alongwith other police officials and Constable Badre Alam. Though he tried to escape, he was apprehended and arrested and LML Vespa Scooter BR 17-B-4455 was recovered. The arrest memo and recovery memo of the scooter was prepared in the presence of independent witnesses namely, Sunil Mandal and Santosh Vikral and the seizure memo was signed by the said witnesses. The same was marked as Exhibit 6-1 and was proved by him.

It was at a later stage that the other accused were arrested.

11. Learned senior counsel appearing on behalf of the appellants have submitted that neither the witness of arrest memo of either of the appellants nor the panch witness of the recovery of scooter and motor cycle used in the crime has been examined by the prosecution. Even the police Constable Badre Alam who accompanied Jagdish Prasad (PW.8) I.O. at the time of arrest of Gulam Sarbar has not been examined. Therefore, the case of arrest of the appellants as well as the recovery of the vehicles is not worth acceptance and the whole case of the prosecution becomes doubtful.

12. We had been taken through the entire deposition of Jagdish Prasad (PW.8), Investigating Officer, however, no such question was put to him as to why those witnesses were not examined. In the absence of putting such an issue to Jagdish Prasad (PW.8), Investigating Officer, the appellants cannot seek any benefit of such omission or error by the prosecution in conducting of trial.

13. This Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwantbuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 dealt with the issue raised herein observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by

Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181; and Gian Chand & Ors. v. State of Haryana, JT 2013 (10) SC 515).

14. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide: Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614; Kunju @ Balachandran v. State of Tamil Nadu, AIR 2008 SC 1381; Bipin Kumar Mondal v. State of West Bengal AIR 2010 SC 3638; Mahesh & Anr. v. State of Madhya Pradesh (2011) 9 SCC 626; Prithipal Singh & Ors. v. State of Punjab & Anr., (2012) 1 SCC 10; and Kishan Chand v. State of Haryana JT 2013(1) SC 222).

15. If the prosecution had not examined the Panchnama witnesses and witnesses to the arrest memos of the appellants, the appellants could have examined them in their defence.

16. The prosecution has successfully established the involvement of the appellants in the crime and the manner in which the crime has been committed establishes the

conspiracy. The appellants in their statement under Section 313 Cr.P.C. did not furnish any satisfactory explanation of the circumstances under which they were present at the place of occurrence. More so, the manner in which they fled away after the commission of the crime clearly indicates their involvement in the offence to conduct a conspiracy. Gopal Prasad Sinha (PW.7) has no enmity with either of the appellants and there was no reason for him to involve them falsely in such a heinous crime.

17. Thus, the trial court after appreciating the evidence recorded the findings of fact regarding the presence of the appellants at the place of occurrence as well as the presence of Dr. Gopal Prasad Sinha (PW.7). The said witness was well acquainted with all the accused and particularly the appellants. He had seen them alongwith Binod Kumar (accused) gathering all the accused at the place of occurrence. Some of the accused persons particularly Gulam Sarbar engaged and used to sit together in a gumti and have tea there. A conspiracy was hatched by Binod Kumar (accused) as Sant Kumar Sinha (deceased) had created problems in his family life as well as in his business because the deceased did not like the illicit relationship between Binod Kumar (accused) and Shipra Sen Choudhery. The manner in which the crime was committed it seems that it was a pre-planned murder. There was sufficient light in the nearby building Nirankari Bhavan at the time of commission of the offence. There was no material contradiction, embellishment or improvement in the deposition of Dr. Gopal Prasad Sinha (PW.7). The defence though examined three witnesses but none of them was relevant for their purpose.

The trial court acquitted Dhiren Mahto of the charges under Section 27 of the Arms Act giving cogent reasons.

18. The High Court reappreciated the evidence and upheld the findings of facts recorded by the trial court observing that the ocular evidence was in consonance and in conformity with the medical evidence and it was a clear cut case of conspiracy. The High Court rightly observed that normally the perpetrator of crime in a case of conspiracy does not take part in the execution rather such conspirator hires some criminal directly or indirectly to execute the evil design planned by him. There may be circumstances where the conspirator remains vigilant to conceal his identity and would not disclose the actual motive behind the conspiracy.

19. Thus, we do not see any reason for interfering that the prosecution witnesses have deposed falsely to implicate the appellants.

20. Thus, in view of the above, the facts and circumstances of these appeals do not warrant interference. The appeals lack merit and are dismissed accordingly.