



**REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL No(s). 847 & 848 OF 2014**

**GOPI CHAND @ PAPPU** **...APPELLANT**

**VERSUS**

**STATE (NCT OF DELHI)** **...RESPONDENT**

**J U D G M E N T**

**MANOJ MISRA, J.**

1. These two appeals impugn a common judgment and order of the High Court of Delhi at New Delhi<sup>1</sup> dated 02.08.2013, whereby six appeals including two appeals<sup>2</sup> of the appellant against the order(s) of trial court in Sessions Case Nos. 25 and 25-A of 2008, arising from FIR<sup>3</sup> No.300 of 1984 at P.S.<sup>4</sup> Civil Lines, and FIR No.190 of 1984 at P.S. Alipur, respectively, were dismissed. As single set of evidence was led in both the trials, the High Court proceeded to decide the appeals by a common impugned order. As a result, these two appeals were heard together and are being decided by a common judgment.

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<sup>1</sup> High Court

<sup>2</sup> i.e., Criminal Appeal Nos. 349 and 352 of 2009

<sup>3</sup> First Information Report

<sup>4</sup> Police Station

## **BACKGROUND FACTS**

**2.** Two dead bodies were found under jurisdiction of different police stations. One body was found on 13.7.1984, which gave rise to FIR No.300/ 1984 at P.S. Civil Lines, and the other was found on 16.7.1984, which gave rise to FIR No. 190/1984 at P.S. Alipur. FIR No.300 gave rise to Sessions Case No.25 of 2008 whereas FIR No.190/1984 gave rise to Sessions Case No.25-A of 2008. The dead body concerning FIR No. 300/1984 was identified as that of Arun Kumar. Whereas the dead body in respect of FIR No.190 /1984 was identified as that of Jasbir.

**3.**Investigation revealed that the two deceased i.e., Arun Kumar and Jasbir were driver and cleaner respectively of Truck No. URM 660 owned by Dayal Chand (PW-23); and the accused had killed them to steal the Truck.

**4.**On 24.7.1984, co-accused Tejpal, Kishan Lal and Ram Chhail were arrested found sitting in Truck No. OSC-4115. Forensic report confirmed that Truck No. OSC-4115 was none other than stolen Truck No. URM 660, which was later released in favour of its owner (PW-23).

**5.** On 29.7.1984, Gopi Chand (i.e., the appellant) was arrested, and on 6.8.1984 Ashok was arrested. The materials collected during investigation indicated involvement of the aforesaid five persons. Out of those five, Ashok Kumar was made an approver and produced as PW-1 in the trial. Co-accused Ram Chhail, elder brother of the appellant, died during trial. The remaining three including the appellant were convicted by the trial court in Sessions Case Nos.25 and 25-A of 2008. In consequence, two appeals were filed by each of the three convicts. In total, six appeals were filed. All six appeals were dismissed *vide* the common impugned order.

**6.** As the sentence awarded to Tejpal and Kishan Lal has been remitted, as per policy of the State, these two appeals espouse the cause of Gopi Chand alone.

**7.** The prosecution version, in a nutshell, is that the aforesaid five persons including Ashok Kumar, who later became approver, hatched a plan to steal a truck. In furtherance of that plan, they hired Truck No. URM 660 for carrying pumpkin (*Kashiphal*). In execution of the plan, the driver (i.e., Arun Kumar) and cleaner (Jasbir) were killed and the truck was stolen.

**8.** Testimony of Ashok Kumar (PW1) is the sheet anchor of the prosecution case. He was arrested on 06.08.1984. On 09.08.1984, he moved an application to make his statement before the Magistrate concerned. After giving him two weeks' time to ruminate, on 23.08.1984 his confessional statement was recorded under Section 164 of the Code of Criminal Procedure, 1973<sup>5</sup>. On 18.10.1984, Ashok Kumar sought pardon and offered to become an approver. On 19.10.1984, his prayer was accepted. Thereafter, a charge-sheet was filed on 20.10.1984. However, since the Magistrate concerned had committed the case without holding an enquiry as contemplated under Section 306 of the CrPC, the Court of Session, *vide* order dated 27.07.1985, remitted the matter to the Committal Magistrate for recording statement of Ashok Kumar. Whereafter, statement of Ashok Kumar was recorded on three dates i.e., 05.09.1985, 06.09.1985 and 17.09.1985, and the defence counsel was allowed to cross-examine him. After such enquiry, the case was again committed to the Court of Session by the concerned Magistrate on 20.09.1985.

**9.** Though there were two trials (i.e., Sessions Case No.25 and 25-A of 2008) arising from two FIRs (i.e.,

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<sup>5</sup> CrPC

FIR No.300 of 1984 and FIR No.190 of 1984), they were consolidated and a single set of evidence was led in the lead Sessions Case No.25 of 2008 which arose out of FIR No.300 of 1984 *qua* dacoity and killing of Arun Kumar (i.e., the driver).

**10.** In Sessions Case No.25 of 2008, arising from FIR No. 300 of 1984, the trial court convicted Tejpal, Gopi Chand and Kishan Lal *vide* judgment dated 03.03.2009 for offences punishable under Sections 302/ 396/ 201/ 120-B of the Indian Penal Code, 1860<sup>6</sup> and, *vide* order dated 7.3.2009, sentenced them as under:

- (i) Life imprisonment plus fine of Rs. 2,00,000/- under Section 302 IPC; on default in payment of fine, additional simple imprisonment of two years;
- (ii) Ten years rigorous imprisonment plus fine of Rs. 50,000/- under Section 396 IPC; on default in payment of fine, additional simple imprisonment of one year;
- (iii) Six years rigorous imprisonment plus fine of Rs. 25,000/- for offence punishable under Section 201 IPC; on default in payment of

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<sup>6</sup>IPC

fine, additional simple imprisonment of six months;

- (iv) Six years rigorous imprisonment plus fine of Rs. 25,000/- for offence punishable under Section 120-B IPC; on default in payment of fine, additional simple imprisonment of six months.

All sentences were to run concurrently.

**11.** In Sessions Case No.25-A of 2008, arising from FIR No.190 of 1984 *qua* murder of Jasbir, the aforesaid three accused were convicted for offences punishable under Section 302/ 201/ 120-B IPC and sentenced similarly as in Sessions Case No.25 of 2008 for those offences.

**12.** Aggrieved by the judgment and order of the Trial Court, the appellant i.e., Gopi Chand filed two appeals i.e., Criminal Appeal No(s). 349 of 2009 and 352 of 2009. The High Court dismissed all six appeals *vide* common impugned judgment and order dated 02.08.2013.

**13.** We have heard Mr. A Sirajudeen, learned senior counsel, for the appellant; and Mr. Vikramjeet Banerjee, Additional Solicitor General, for the State (NCT of Delhi) and perused the record.

### **Submissions on behalf of appellant**

**14.** On behalf of the appellant it was, *inter alia*, submitted:

- (i) The prosecution case rests on approver's (PW-1's) testimony. First, it is unsafe to rely on an approver's testimony unless it is corroborated in material particulars, which is lacking here. Second, PW-1's testimony is exculpatory in nature, which renders his testimony completely unreliable.
- (ii) Even if the testimony of PW-1 is accepted, commission of the offence of criminal conspiracy to commit murder of either Arun Kumar or Jasbir is not proved against the appellant, therefore the punishment of imprisonment for life awarded to the appellant on the charge of criminal conspiracy to commit murder is liable to be set aside.
- (iii) No separate charge of criminal conspiracy to commit murder was framed against the appellant; therefore, he could not have been convicted therefor.

- (iv) Prosecution had withheld key witnesses and, therefore, adverse inference ought to have been drawn against the prosecution.

### **Submissions on behalf the State**

**15.** Per contra, on behalf of the State it was submitted that PW-1's statement is inculpatory and stands corroborated on material particulars by various circumstances proven on record; therefore, it was safe to rely on his testimony. Besides, there were other circumstances to sustain the conviction and the High Court has dealt with all aspects in detail; therefore, by placing reliance on the testimony of PW1, neither the High Court nor the Trial Court committed any error. As regards non-framing of the specific charge of criminal conspiracy to commit murder, or of murder simpliciter, as against the appellant, the charge framing order indicates that the name of the appellant (i.e., Gopi Chand) appeared along with other accused in respect of the charge regarding conspiracy to commit murder of Arun Kumar. In fact, the appellant had pleaded not guilty and claimed for a trial, which is borne out from the endorsement made by the appellant in the charge framing order. As to how and in what circumstances the name of the appellant was struck off from the charge framing order *qua* that charge is not clear.

Further, the appellant and other co-accused had a common counsel who had cross-examined the witnesses *qua* the charge of murder; therefore, no prejudice had been caused to the appellant for not framing a specific charge *qua* criminal conspiracy to commit murder. Moreover, the High Court has dealt with all these issues raised here and there appears no palpable error in the judgment of the High Court as to warrant an interference.

## **ISSUES**

**16.** We have accorded due consideration to the rival contentions and have perused the record. Based on the submissions made, in our view, the following issues arise for our consideration:

(a) Whether the testimony of PW-1 (i.e., the approver) could form the basis of conviction of the appellant?

(b) Whether the appellant's conviction under Section 302 read with Section 120-B IPC is sustainable?

## **DISCUSSION & ANALYSIS**

**17.** Before we address the issues posited above, it is necessary to examine the charges framed by the trial

court and the nature of evidence led by the prosecution to secure conviction of the accused in the two cases.

**18.** At this stage, we may put on record that the numbers of the session trials, namely, 25 and 25-A of 2008, were generated on reassignment of the trials. Prior to the reassignment, those were differently numbered. However, since the trial court's verdict refers to Sessions Case Nos.25 and 25-A, we have referred to those numbers.

#### **Charges on which accused were tried**

**19.** The charges were framed twice. Initially, the charges were framed on 30.10.1985. Thereafter, they were re-framed on 21.1.1986. To have a clear understanding of the prosecution case, we deem it apposite to reproduce the charge framing orders dated 30.10.1985 and 21.1.1986. On 30.10.1985, three charges were framed, which read as under:

A. I, Mohd. Shamim, Addl. Sessions Judge, Delhi, do hereby charge you Ram Chhail s/o Mangey Ram, Tej Pal s/o Balu Ram, Kishan Lal s/o Chand Ram, **Gopi Chand @ Pappu** s/o Mangey Ram as under:

During the period from 12.7.84 to 13.7.84 near Rajiv Farm Burari within the jurisdiction of P.S. Civil Lines you all (along with Ashok approver) having reasons to believe that the offence of dacoity and murder punishable by death have been committed, you did cause certain evidence of the above said offence to disappear with the intention of screening yourself from legal punishment and thereby committed an offence

punishable U/s 201/ 34 IPC within the cognizance of this Court.

And, I hereby direct that you be tried by this court of the aforesaid charge.

Sd/- ASJ/ 30.10.85

The charge has been read over and explained to the accused and they are questioned as under:

Q. Do you plead guilty or claim trial?

Ans. I plead not guilty and claim to be tried.

*(Note: Above question was repeated for each of the four accused and answered by them identically as above, which is confirmed by their signature including signature of the Presiding Officer of the Court)*

B. I, Mohd. Shamim, Addl. Sessions Judge, Delhi, do hereby charge you Ram Chhail s/o Mangey Ram and Kishan Lal s/o Chand Ram, as under:

During the period from 12.7.84 to 13.7.84 near Rajiv Farm Burari within the jurisdiction of P.S. Civil Lines in furtherance of common intention you intentionally caused the death of Arun Kumar after committing dacoity of Truck No. URM 660 and thereby committed the offence of murder punishable U/s 302 read with Section 34 IPC and within the cognizance of this Court of Session.

And, I hereby direct that you be tried by this court on the aforesaid charge.

Sd/- ASJ/ 30.10.85

The charge has been read over and explained to the accused persons and they are questioned as follows:

Q. Do you plead guilty or claim trial?

Ans. We plead not guilty and claim to be tried.

Sd/- Ram Chhail; Sd/- Kishan Lal; Sd/-ASJ  
Dt. 30.10.85

C. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you Ram Chhail s/o Mangey Ram, Tej Pal s/o Balu Ram, Kishan Lal s/o Chand Ram, **Gopi Chand @ Pappu** s/o Mangay Ram as under:

During the period from 12.7.84 to 13.7.84 near Rajiv Farm Burari within the jurisdiction of P.S. Civil Lines you all (along with Ashok approver) committed dacoity of Truck no. URM 660 which was at that time in possession of Arun Kumar driver and Jasbir Singh cleaner and that in the commission of above said dacoity two of you committed the murder of Arun Kumar and thereby committed an offence punishable U/s 396 IPC and within the cognizance of this Court.

And, I hereby direct that you be tried by this court on the aforesaid charge.

Sd/- ASJ/ 30.10.85

The charge has been read over and explained to the accused persons and they are questioned as under:

Q. Do you plead guilty or claim trial?

Ans. I plead not guilty and claim to be tried.

*(Note: Above question was repeated for each of the four accused and answered by them identically as above, which is confirmed by their signature including signature of the Presiding Officer of the Court)*

**20.** On 21.1.1986, charges were reframed. The trial was held on the reframed five charges reproduced herein below:

A. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail and (2) Kishan Lal, as under:

During the period from 12.7.84 to 13.7.84 near Rajiv Farm, village Burari, within the jurisdiction of P.S. Civil Lines, in pursuance of the above said conspiracy you

both intentionally caused the death of Arun Kumar after committing dacoity of Truck No. URM 660 and thereby committed an offence punishable under Section 302 IPC read with Sec. 120-B IPC and within the cognizance of this Court.

And, I hereby direct that you both be tried by this Court on the aforesaid charge.

Sd/- ASJ/ 21.1.86

The charge has been read over and explained to the accused and they are questioned as follows:

Q. Do you plead guilty or claim trial?

A. Ram Chhail: I plead not guilty and claim trial.

A. Kishan Lal: I plead not guilty and claim trial.

Sd/- Ram Chhail; Kishan Lal; ASJ  
dt/- 21.1.86

B. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) **Gopi Chand** and (4) Tejpal, as under:

On 12.7.84 at Delhi you all along with Ashok (approver) agreed to do the illegal act by illegal means to commit dacoity of Truck No. URM 660 and murder of Arun Kumar and Jasbir Singh and thereby committed an offence punishable under Sec. 120-B IPC and within the cognizance of this Court.

And, I hereby direct that you all be tried by this Court on the aforesaid charge.

Sd/- 21.1.86

The charge has been read over and explained to the accused and they are questioned as follows:

Q. Do you plead guilty or claim trial?

A. Ram Chhail: I plead not guilty and claim trial.

A. Krishan Lal: I plead not guilty and claim trial.

A. **Gopi Chand**: I plead not guilty and claim trial.

A. Tej Pal: I plead not guilty and claim trial.

Sd/- Ram Chhail, Kishan Lal, Gopi Chand @  
Paapu, Tej Pal and ASJ

dt/- 21.1.1986

C. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) **Gopi Chand (this name was struck off) and (4) (changed to) (3) Tejpal**, as under:

During the intervening night of 12/13.7.84 in a jungle near Hiranki village, within the jurisdiction of P.S. Alipur, Delhi in pursuance of the conspiracy you intentionally caused the death of Jasbir alias Kala after committing the dacoity of Truck No. URM 660 and thereby committed an offence punishable under Section 302 IPC read with Section 120-B IPC and within the cognizance of this Court.

And, I hereby direct that you all be tried by this court on the aforesaid charge.

Sd/- ASJ/ 21.1.86

The charge has been read over and explained to the accused and they are questioned as follows:

Q. Do you plead guilty or claim trial?

A. Ram Chhail: I plead not guilty and claim trial.

A. Kishan Lal: I plead not guilty and claim trial.

A. **Gopi Chand**: I plead not guilty and claim trial.

A. Tejpal: I plead not guilty and claim trial.

Sd/- Ram Chhail, Kishan Lal, Gopi Chand, Tejpal  
and ASJ

Dt/- 21.1.86

D. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) **Gopi Chand** @ Pappu and (4) Tejpal, as under:

During the period from 12.7.84 to 13.7.84 near Rajiv Farm, village Burari, within the jurisdiction of P.S. Civil Lines, you along with Ashok (approver) committed the dacoity of truck No. URM 660, which was at that time in possession of Arun Kumar driver and Jasbir Singh cleaner, in pursuance of the above said conspiracy and thereby committed an offence punishable under Sec. 396 IPC read with Sec. 120-B IPC and within the cognizance of this Court.

And, I hereby direct that you will be tried by this court on the aforesaid charge.

Sd/- ASJ

Dt/- 21.1.86

The charge has been read over and explained to the accused and they are questioned as follows:

Q. Do you plead guilty or claim trial?

A. Ram Chhail: I plead not guilty and claim trial.

A. Krishan Lal: I plead not guilty and claim trial.

A. Gopi Chand: I plead not guilty and claim trial.

A. Tejpal: I plead not guilty and claim trial.

Sd/- Ram Chhail, Kishan Lal, **Gopi Chand**, Tejpal,  
ASJ

Dt/- 21.1.86

E. I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) **Gopi Chand** and (4) Tejpal, as under:

During the period from 12.7.84 to 13.7.84 you along with Ashok (approver) near Rajiv Farm, village Burari in the jungle of village Hiranki, within the jurisdiction of P.S. Civil Lines and P.S. Alipur respectively, you all had reasons to believe that the offences of dacoity and murder, punishable by death, has been committed, you did cause certain evidence of the aforesaid offences to disappear with the intention of screening yourself from illegal punishment and thereby committed an offence punishable under Sec. 201 read with Sec. 120-B IPC and within the cognizance of this court.

And, I hereby direct that you be tried by this court on the aforesaid charge.

Sd/- ASJ dt/- 21.1.86

The charge has been read over and explained to the accused and they are questioned as follows:

Q. Do you plead guilty and claim trial?

A. Ram Chhail: I plead not guilty and claim trial.

A. Kishan Lal: I plead not guilty and claim trial.

A. Gopi Chand: I plead not guilty and claim trial.

A. Tejpal: I plead not guilty and claim trial.

Sd/- Ram Chhail, Kishan Lal, Gopi Chand, Tejpal, ASJ

Dt/- 21.1.86”

### **Nature of the evidence led by the prosecution**

**21.** The inculpatory evidence brought in the course of trial is both direct as well as circumstantial. Direct evidence comes from Ashok Kumar (PW-1) i.e., the approver. Circumstantial evidence(s) are corroboratory in nature. Those are, *inter alia*, regarding: (a) ownership and identification of the stolen truck; (b) possession of

the stolen truck with some of the accused; (c) identification of the bodies of the two deceased; (d) the two deceased being driver and cleaner of the truck; (e) autopsy reports confirming homicidal death; and (f) seizure /recovery of dead bodies, articles, papers, etc corroborating the testimony of PW-1.

**Issue (a) : Whether PW-1 (approver) testimony could form the basis of conviction?**

**22.** In the present case, on behalf of the appellant, two points have been urged to discard the testimony of PW-1. One, PW-1's statement is self-exculpatory; and second, it has not been corroborated in material particulars. Before we consider the testimony of PW-1 (i.e., the approver), we must consider the legal principles on the probative value of an approver's testimony.

**Legal principles regarding Approver's testimony**

**23.** Ordinarily, an approver is regarded as an infamous witness, who, on his own showing has participated in a crime and later to save his own skin turned against his former associates and agreed to give evidence against them in the hope that he will be pardoned for the offence committed by him.<sup>7</sup> Woodroffe and Amir Ali in

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<sup>7</sup> State of A.P. v. Cheemalapati Ganeswara Rao & Anr., 1963 SCC OnLine SC 38: AIR 1963 SC 1850

their treatise “Law of Evidence”<sup>8</sup> cite three reasons as to why accomplice evidence is considered untrustworthy: (a) because an accomplice is likely to swear falsely to shift the guilt from himself; (b) because an accomplice, as a participator in crime, and consequently an immoral person, is likely to disregard the sanctity of an oath; and (c) because he gives his evidence under the promise of pardon, or in the expectation of an implied pardon, if he discloses all he knows against those with whom he acted criminally; and his hope might lead him to favour the prosecution.

**24.** Section 133<sup>9</sup> of the Evidence Act, 1872<sup>10</sup> states that an accomplice is a competent witness against an accused person and that a conviction is not illegal merely because it is based upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114<sup>11</sup> of the Evidence Act adds a note of caution that testimony of an accomplice is unworthy of credit unless it is corroborated in material particulars. Thus, as a matter of practice and prudence, the testimony of an approver may be accepted in evidence for recording conviction of an accused person provided it receives

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<sup>8</sup> 19<sup>th</sup> Edition, published by Lexis Nexis, Volume 4 at page 4918

<sup>9</sup> **Section 133. Accomplice.** – An accomplice shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

<sup>10</sup> Evidence Act

<sup>11</sup> **Illustration (b) to Section 114.**- The Court may presume – (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars; ...

corroboration from direct or circumstantial evidence in material particulars.<sup>12</sup> Whether the evidence of the approver should in any given case be accepted or not will have to be determined by applying the usual tests such as the probability of the truth of what he has deposed to, the circumstances in which he has come to give evidence, whether he has made a full and complete disclosure, whether his evidence is merely self-exculpatory and so on and so forth. The court has, in addition, to ascertain whether his evidence has been corroborated sufficiently in material particulars.<sup>13</sup>

**25.** On the interplay between Section 133 and Illustration (b) to Section 114 of the Evidence Act, a three-Judge bench of this Court in **Somasundaram @ Somu v. State represented by the Deputy Commissioner of Police**,<sup>14</sup> after surveying several precedents, held:

77. ... the combined result of Section 133 read with illustration (b) to Section 114 of the Evidence Act is that the courts have evolved, as a rule of prudence, the requirement that it would be unsafe to convict an accuse solely based on uncorroborated testimony of an accomplice. The corroboration must be in relation to the material particulars of the testimony of an accomplice. It is clear that an accomplice would be familiar with the general outline of the crime as he would be one who has participated in the same and therefore, indeed, be familiar with the matter in general terms. The connecting link

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<sup>12</sup> Rampal Pithwa Rahidas & ors. v. State of Maharashtra, 1994 Supp (2) SCC 73

<sup>13</sup> State of Andhra Pradesh v. Cheemalapatti Ganeswara Rao & Anr. (supra)

<sup>14</sup> (2020) 7 SCC 722

between a particular accused and the crime, is where corroboration of the testimony of an accomplice would assume crucial significance. The evidence of an accomplice must point to the involvement of a particular accused. It would, no doubt, be sufficient, if his testimony in conjunction with other relevant evidence unmistakably makes out the case for convicting an accused.

78. As laid down by this court, every material circumstance against the accused need not be independently confirmed. Corroboration must be such that it renders the testimony of the approver believable in the facts and circumstances of each case. The testimony of one accomplice cannot be, ordinarily, be supported by the testimony of another approver. We have used the word “ordinarily” inspired by the statement of the law in *K. Hashim* wherein this court did contemplate special and extraordinary cases where the principle embedded in Section 133 would literally apply. In other words, in the common run of cases, the rule of prudence which has evolved into a principle of law is that an accomplice, to be believed, must be corroborated in material particulars of his testimony. The evidence which is used to corroborate an accomplice need not be direct evidence and can be in the form of circumstantial evidence.”

(Emphasis supplied)

**26.** In *Kashmira Singh v. State of Madhya Pradesh*<sup>15</sup> speaking for the Bench, Vivian Bose, J., in his inimitable style, while holding that the requirement of corroboration of the testimony of an approver is only a rule of prudence, on the question whether conviction could be based on the uncorroborated testimony of an accomplice, observed: “*so far as the law is concerned, a conviction can be based on the uncorroborated testimony of an accomplice provided the Judge has the rule of*

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<sup>15</sup> (1952) 1 SCC 275; 1952 SCC OnLine SC 19, paragraph 13

*caution, which experience dictates, in mind and gives reasons why he thinks it would be safe in a given case to disregard it.”*

**27.** In ***K. Hashim v. State of T.N.***<sup>16</sup> this Court held that although Section 114 Illustration (b) provides that the court ‘may’ presume that the evidence of an accomplice is unworthy of credit unless corroborated, ‘may’ is not ‘must’ and no decision of court can make it ‘must’. It was held that the court is not obliged to hold that he is unworthy of credit; ultimately, it depends upon the court’s view as to the credibility of evidence tendered by an accomplice.

**28.** On the nature and extent of corroboration required, if need be, in ***Rameshwar v. State of Rajasthan***,<sup>17</sup> which has been consistently followed, this Court observed that though it is impossible to formulate the kind of evidence which should, or would, be regarded as corroboration, its nature and extent would vary with the circumstances of each case and also according to the particular circumstances of the offense charged. After observing so, the following guiding principles were laid:

- (i) It is not necessary that there should be independent confirmation of every material

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<sup>16</sup> (2005) 1 SCC 237, paragraph 27

<sup>17</sup> 1951 SCC 1213: 1951 SCC OnLine SC 83

circumstance. It is not the requirement of law that the independent evidence by itself should be sufficient to sustain conviction. Rather, there must be some additional evidence rendering it probable that the story of the accomplice is true and that it is reasonably safe to act upon it.

- (ii) The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or the complainant that the accused committed the crime. All that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness' story that the accused was the one, or among those, who committed the offence.
- (iii) The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But if circumstances are such as to make it safe to dispense with the necessity of

corroboration, a conviction so based would not be illegal.

- (iv) The corroboration need not be direct evidence. It is sufficient if it is merely circumstantial evidence of the accused's connection with the crime.

**Summary of legal principles regarding the necessity of corroboration of an approver's testimony**

**29.** In our view, the legal principles regarding the necessity of corroboration of an approver's testimony could be summarised as under:

- (a) It is not an inviolable rule of law that testimony of an approver must be independently corroborated in material particulars before it could form the basis of conviction. The requirement of corroboration is not mandated by law but is a rule of prudence. Therefore, the Court may convict an accused even on an uncorroborated testimony of the approver provided it is satisfied, and record reasons for its satisfaction, that it is safe to rely on such testimony even in the absence of corroboration.

(b) Corroboratory evidence, if required, may be either direct or circumstantial, or both.

(c) However, where corroboration is considered necessary, it must come from independent sources. Ordinarily, the testimony of one approver is not to be used to corroborate the testimony of another approver.

(d) Corroboration, when required, must be such that it renders the testimony of the approver believable in the facts and circumstances of the case. However, it is not the requirement of law that every material circumstance against the accused is independently confirmed.

**30.** Having noticed the law regarding the necessity of corroboration of an approver's testimony, we shall now consider few decisions of this Court wherein certain tests were adopted to determine the creditworthiness of the testimony of an approver.

**Tests to determine creditworthiness of the testimony of an approver**

**31.** In *Ravinder Singh v. State of Haryana*,<sup>18</sup> this Court held that that an approver must prove his

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<sup>18</sup> (1975) 3 SCC 742, paragraph 12

worthiness for credibility in court. The test of worthiness is fulfilled, first, if the story he narrates involves him in the crime and appears intrinsically to be a natural and probable catalogue of events that had taken place and, secondly, the story given by him insofar as the accused on trial is concerned, must implicate him in such a manner as to give rise to a conclusion of guilt beyond reasonable doubt.

**32.** In ***Chandan and another v. State of Rajasthan***,<sup>19</sup> this Court rejected the testimony of an approver who, *inter alia*, claimed to be a spectator at every moment but did not participate at any stage.

**33.** In ***Rampal Pithwa (supra)*** to determine the creditworthiness of the approver's testimony, this Court held that the court may look for answers to the following questions: (a) How the approver came to be arrested? (b) How did he become a participant in the crime? (c) What role did he play in the crime? (d) When and how he decided to be an approver? It was observed that these were some of the questions which would have to be considered to determine the creditworthiness of an approver's testimony and the nature and extent of corroboration required before his testimony can be relied upon in support of the prosecution case. In that

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<sup>19</sup> (1988) 1 SCC 696

case upon finding that the approver was arrested in some other case and, till his arrest, the investigation had drawn a blank in the case and was being criticized for not solving the crime and, therefore, the investigating agency was under pressure, the Court held:

“33. A careful analysis of the statement of the approver given at the trial coupled with the circumstances under which he came to be arrested, the averments in his application for grant of bail and other circumstances has created an impression on our minds that the approver is a planted witness and his testimony is not at all worthy of reliance and credence. The investigating agency appears to have created false evidence and fabricated false clues insofar as the testimony of the approver is concerned. From all the attendant circumstances, we are satisfied that the approver Ramcharan is not a reliable witness; his arrest was intrinsically unnatural and his self-confessed participation in the crime without taking any active part in it not acceptable. The approver has claimed to be a spectator of every fact and of every moment but asserted that he did not participate in the assault at any stage and remained standing at a distance taking care of the clothes of some of the co-accused. His statement is almost of an exculpatory nature. His statement as a whole does not inspire confidence. His story is not worthy of credence. ...”  
(Emphasis supplied)

**34.** In ***Suresh Chandra Bahri v. State of Bihar***,<sup>20</sup> this Court held that the dominant object of the provision of Section 306 CrPC (i.e., the provision for grant of pardon) is that offenders of heinous crime do not go unpunished. Since the object is to prevent the escape of offenders from punishment in heinous

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<sup>20</sup> 1995 Supp (1) SCC 80

offences for lack of evidence, there can be no objection against the tender of pardon to an accomplice simply because in his confession, he does not implicate himself to the same extent as the other accused. This Court went on to observe that all that Section 306 requires is that pardon may be tendered to any person believed to be involved directly or indirectly in or privy to an offense.

**35.** Relying on **Suresh Chandra Bahri (supra)**, in **A. Devendran v. State of T.N.**,<sup>21</sup> this Court held that if the approver's testimony shows his participation in the crime, though not in the actual killing, his testimony as an approver cannot be discarded merely because he deposes that he participated under the persuasion and threat of other persons. What is important is the approver's participation in the crime, though it may not be to the same extent as the other accused.

**36.** Having regard to the decisions discussed herein above, in our view, what is settled is that the creditworthiness / reliability of the testimony of an approver is not dependent on any one factor. There are several factors which must be considered cumulatively to determine whether the testimony is credible and reliable. The first and foremost is that the approver

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<sup>21</sup> (1997) 11 SCC 720

must not appear to be a planted witness. Once that hurdle is crossed, the testimony of an approver is to be tested as any other witness, though with greater care and caution. One of the necessary tests is that his testimony must be inculpatory and not exculpatory. However, if his testimony is not entirely exculpatory and makes a full and complete disclosure of the events *qua* commission of the crime, which inspires confidence i.e., appears truthful in the context of proven circumstances, his testimony cannot be discarded as one lacking credibility merely because he does not implicate himself to the extent he implicates the other co-accused.

### **Consideration of PW-1's testimony**

**37.** To appreciate whether the statement of PW-1 is self-exculpatory or not, it would be worthwhile to extract some part of his deposition regarding the two murders. In respect of murder of the cleaner Jasbir, PW-1 stated:

“.....Accused Ram Chhail took off his pant and caught hold of the said cleaner. The cleaner got frightened. The cleaner bore a boyish appearance, aged 16-17 years, height about 5 feet. Accused Ram Chhail told the cleaner that he would not be killed. Rather he would be tied in the fields. He further told the cleaner that his driver would also be tied and left in the fields. There was long grass in the fields at that time. The cleaner was asked to take off his clothes. Thereafter his hands and feet were tied with his clothes. His hands were tied behind his back. He was made to lie on the ground. Kishan then brought a Gandasa, 1 foot in length,

over there. I then saw through the intention of the accused Ram Chhail and concluded therefrom that the cleaner would be murdered. I requested accused Ram Chhail not to do so and leave the cleaner on the fields with his hand and feet tied. The accused Ram Chhail then told me that in case the cleaner was left alive, in that eventuality we all would be killed. Accused Ram Chhail sat on the chest of the cleaner and started pressing his neck. Kishan caught hold of his legs. I also caught hold of the legs of the cleaner at the instance of accused Ram Chhail, as the cleaner was moving his legs hither and thither. The cleaner fell unconscious within two or three minutes. Accused Ram Chhail left the cleaner and Kishan accused, and I also left him. The cleaner was gasping for breath at that time. Accused Ram Chhail then told us that the cleaner would survive. Consequently, he took up the Gandasa brought by Kishan and gave a blow on the neck of the cleaner as a result thereof, his neck was cut to a great extent. He started bleeding profusely. Accused Ram Chhail then opened his hands and feet. We then proceeded in the direction of the tuck. There were pits of water in between the truck and the place of occurrence. The accused Ram Chhail threw that Gandasa in that water and washed his hands and feet. We then came to the truck No. HRA 6825...

(Emphasis supplied)

In respect of murder of the driver Arvind, PW-1 stated:

“.... We all five got down from the truck bearing number URM-660 along with the driver of the truck. The driver after having got down from the truck, started looking at the truck bearing number HRA 6825. The accused Ram Chhail took off his pants. The driver suspected some mischief from the accused persons as there was no *Kashiphal*<sup>21A</sup> loaded in the truck. Accused Ram Chhail immediately swooped on the driver of the truck. Accused Tejpal also helped accused Ram Chhail in catching hold of the driver. The driver was taken towards the fields. Accused Gopi was left on the truck to guard them. Kishan accused and I followed them. Accused Kishan was armed with a Gandasa at that time. The accused Ram Chhail searched the person of the driver. The search resulted in recovery of Rs. 1000 to 1200 from one pocket and Rs. 100 to 200 from the other pocket. There

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<sup>21A</sup> Pumpkin in vernacular dialect of North India

was also a sheet of paper which was recovered from the pocket of the driver. Accused Ram Chhail handed over the paper, pink in color, to me and appropriated the entire money himself. I lost temper. Then tore away that paper and threw it on the ground. The deceased driver was then taken to the bank of a canal. The said canal was dry. The clothes were removed from his body. His hands and feet were tied with his clothes. He was made to lie on the ground. Accused Ram Chhail sat on his chest and started pressing his neck. Accused Kishan caught hold of his legs. Accused Tejpal pressed his mouth and nose with his hands. I was standing as a guard. The driver fell unconscious. Thereafter, the accused persons left him. Accused Ram Chhail thereafter picked up the Gandasa and hit the deceased driver thrice on his neck with the same. Accused Kishan, prior to it, had kept the Gandasa nearby. His head was severed from his body as a result of the blows of the Gandasa. The hands and feet of the driver were then untied. Accused Tejpal then put his severed head in the clothes of the deceased and wrapped it. Accused Tejpal, then picked up the clothes in which the severed head was wrapped, and we all came to the truck parked on the side of the road. The remaining portion of that body was left there. Accused Ram Chhail brought the Gandasa with him. Accused Kishan took out an iron rod from the toolbox of the truck. Accused Kishan and Tejpal then went in the fields situated on the other side of the road along with that head wrapped in the clothes and that iron rod. I stood on the road. Accused Ram Chhail move to the opposite direction from the place where the murder took place. Accused Kishan dug a pit and put that head of the deceased driver into that pit and then struck it repeatedly with iron rod. I was watching all this while standing on the road. Accused Ram Chhail thereafter returned to the truck empty handed. We all four persons then came to the road where the truck was standing. Accused Gopi was already there from before. Truck number URM 660 was driven by accused Ram Chhail. I and Kishan boarded the said truck. Sri Ram Chhail drove the truck towards village Hiranki. While on our way the old clothes were thrown away sideway. The truck was stopped at DTC bus stop, village Hiranki. Accused Tejpal and Gopi brought the other truck HRA 6825 there. The said truck was being driven by accused Tejpal. The number plate of truck number URM-660 was changed. The sunmica on the windows of the truck was removed,

which was thrown at a little distance from there. There was painted on the truck State Bank of Rishikesh. The same was erased. The documents pertaining to the truck were also taken out from the said truck. They were set on fire....”  
(Emphasis supplied)

**38.** The above-extracts of PW-1’s testimony would indicate that his testimony is not entirely exculpatory. It inculcates PW-1 by showing that he participated in the events that ultimately led to the murder. He stated that he held the legs of one of the deceased to make him unconscious so that they could steal the truck. Therefore, merely because he was not the one who inflicted the fatal blow is not sufficient to discard his testimony as one being entirely exculpatory. Besides, PW-1’s statement clearly shows that he was very much a part of the plan to steal the truck and had actively participated in the crime, though not to the extent the others did. Thus, the first argument that the statement of PW-1 is exculpatory and therefore, would have to be discarded is worthy of rejection and is rejected accordingly.

**39.** In so far as the contention that PW-1’s testimony was not corroborated in material particulars is concerned, suffice it to say that the High Court has considered in detail the various circumstances that corroborate the testimony of PW1 (the approver). These are, *inter alia*, regarding (a) ownership of the looted

Truck and its use by the two deceased for transportation, which was found in possession of the co-accused; (b) identification of the headless body being of Arun Kumar; head/ skull of Arun Kumar found wrapped in a green Pyjama worn by Arun Kumar; torn papers of “bilty” etc lying near the body; head found separate from the body; body of Jasbir found in the agricultural field of village Hiranki where it was disposed of according to PW-1; besides, the dead body carried name ‘Jasbir’ tattooed on the right arm. All these bits and pieces of circumstances corroborated the graphic narration of the crime by PW-1. There is no specific challenge laid to all those circumstances found proved by the High Court. We thus do not propose to deal with the aforesaid submission any further. Suffice it to say that the High Court has dealt with this aspect in detail, and with clarity, to hold that the approver’s testimony was corroborated in material particulars. Besides no serious question was put to PW-1 to doubt his presence at the scene of crime. We, therefore, hold that PW-1’s testimony was reliable and creditworthy and could form the basis of conviction. Issue (a) is decided in terms above.

**Issue (b) : Whether the appellant’s conviction under Section 302 read with Section 120-B IPC is sustainable?**

**40.** The next submission on behalf of the appellant is that the appellant could not have been convicted under Section 302 read with Section 120-B IPC. In this regard, the argument is two-fold. First, there is no specific charge framed against the appellant for an offence of conspiracy to commit murder. Second, even assuming the charge was there, or that the appellant was aware of the charge of conspiracy of murder against him, there is no evidence to substantiate that charge.

**41.** Section 464 of CrPC provides that no finding, sentence or order by a court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

**42.** The argument of the appellant in respect of defect in the charge was raised before the High Court. The High Court while dealing with the role played by Gopi also dealt with the argument in respect of defect in charge. The relevant paragraphs 46, 47 and 48 of the impugned judgment are extracted below:

46. Section 120-B IPC has been rightly invoked against Gopi as far as murder of Jasbir is concerned. The said murder was committed in cool calculated preplanned manner. Arun Kumar and Jasbir were

separated on false pretext and Jasbir was taken to an isolated spot in village Hiranki where he was killed. Gopi Chand was not present at the spot of the occurrence at village Hiranki but as testified by the approver he was present with all accused till, in terms of the plan, Jasbir was separated from Arun Kumar. Gopi was present at the spot of occurrence when Arun Kumar was killed though was guarding the truck. Principle of common intention under Section 34 IPC would be applicable.

47. Before we close, we should deal with the contention of the appellants Tejpal and Kishan on the question of the charges framed against them. In the present case charges were framed on two dates i.e. on 30<sup>th</sup> October, 1985 and again on 21<sup>st</sup> January, 1986 reads as under:-

“I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) Gopi Chand and (4) Tejpal, as under:-

That on 12.07.1984 at Delhi you all along with Ashok (approver) agreed to do the illegal act by illegal means i.e. to commit the dacoity of Truck No. URM-660 and murder of Arun Kumar and Jasbir and thereby committed an offence punishable under Section 120-B IPC and within the cognizance of this Court.

And, I hereby direct that you all be tried by this court on the aforesaid charge.

“Another charge framed on the same date is as under:

“I, Mohd. Shamim, Addl. Sessions Judge, Delhi do hereby charge you (1) Ram Chhail, (2) Kishan Lal, (3) Tejpal, as under:-

That during the intervening night of 12/13.07.1984 in a jungle near Hiranki village, within the jurisdiction of P.S. Alipur, Delhi in pursuance of the conspiracy you intentionally caused the death of Jasbir alias Kala after committing the dacoity of truck No. URM-660 and thereby committed an offence punishable under Section 302 IPC read with Section

120-B IPC and within the cognizance of this court. And, I hereby direct that you all be tried by this court on the aforesaid charge.”

48. No doubt, on the same date other charges were framed against Ram Chhail, Kishan Kumar and Tejpal to the effect that on 12<sup>th</sup> July, 1984 to 13<sup>th</sup> July, 1984, they in conspiracy had caused death of Arun and committed offence under Section 302 read with Section 120-B IPC, but the reading of the two charges mentioned above clearly show that appellants were aware of the case against them that they have been charged with the murder of both Arun Kumar and Jasbir and the offence punishable under Section 120-B. They were also charged for dacoity for having stolen truck No. URM 660. Even if there is any ambiguity or anomaly in the framing of the charge neither of them objected to or questioned it at the time of trial. Looking at the questions asked to the witnesses and the manner in which the trial was conducted, it is clear that no prejudice has been caused and suffered by the appellants. The contention, therefore, has to be rejected.

(Emphasis supplied)

- 43.** On a careful scrutiny of the records, we notice that initially in the charge framing order, the name of Gopi Chand was also there along with Ram Chhail, Kishan Lal and Tejpal for offences punishable under Section 302 IPC read with Section 120-B IPC, but, later, the name of Gopi Chand seems to have been struck off. However, the charge framing order reflects that Gopi Chand had denied the said charge and claimed for trial. In these circumstances, Gopi Chand was fully aware of the charge he was facing and, therefore, having regard to the finding of the High Court, the questions asked to the witnesses which related to that charge, no prejudice

could be said to have been caused to the appellant on ground of any defect in the charge. In the circumstances, we reject this argument also.

**44.** Now, we shall consider the second limb of the argument of learned counsel for the appellant, which is that even if the testimony of PW1 is accepted as correct, no case of criminal conspiracy to commit murder of Jasbir and Arun Kumar is made out against the appellant (Gopi Chand), though it may be said that he was part of the conspiracy to commit dacoity, or had committed the offence of dacoity punishable under Section 396 IPC.

**45.** To test the aforesaid submission a look at the relevant statutory provisions would be apposite.

**46.** Criminal conspiracy is defined in Section 120-A of IPC as follows:

**Definition of criminal conspiracy.** - When two or more persons agree to do, or cause to be done, - (1) an illegal act, or (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offense 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 the ultimate object of such agreement, or is merely incidental to that object.

**47.** Punishment for criminal conspiracy is provided in Section 120-B of IPC, which reads thus:

**Punishment of criminal conspiracy.** – (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding 6 months, or with fine or with both.

**48.** Section 109 of IPC provides punishment of abetment in the following terms:

“Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation. - An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.”

**49.** Section 10 of the Evidence Act makes acts or statements of a conspirator relevant evidence against co-conspirators. It reads thus:

**Section 10. Things said or done by conspirator in reference to common design.**

Where 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 anyone 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 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.

**50.** The essential ingredients of the offence of criminal conspiracy are: (1) an agreement between two or more persons; (2) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal but is done by illegal means. To come to an agreement meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is *sine qua non* of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.<sup>22</sup>

**51.** In ***Firozuddin Basheeruddin & Ors V. State of Kerala***<sup>23</sup>, this Court observed:

“25. Conspiracy is not only a substantive crime, it also serves as a basis for holding one liable for the crime of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonable foreseeable crime committed by every other member of the conspiracy in furtherance of its objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the

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<sup>22</sup> Rajiv Kumar v. State of Uttar Pradesh & Another, (2017) 8 SCC 791

<sup>23</sup> (2001) 7 SCC 596

group as a whole to warrant treating each member as a casual agent to each act. Under this view, which of the conspirators committed the substantive offense would be less significant in determining the defendant's liability than the fact that the crime was performed as part of a larger division of labour to which the accused had also contributed his efforts."

(Emphasis supplied)

**52.** Similar view has been taken in ***State through Superintendent of Police CBI/ SIT V. Nalini & Ors.***<sup>24</sup>

where this Court while summarizing the broad principles governing the law of conspiracy, observed:

**583. ....**

9. It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies."

(Emphasis supplied)

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<sup>24</sup> (1999) 5 SCC 253

**53.** In *Bhagwan Swarup Lal Bishan Lal & others v. State of Maharashtra*<sup>25</sup>, after considering the provisions of Section 120-A of IPC and Section 10 of the Evidence Act, this Court held:

Para 8...

“The essence of conspiracy is, therefore, that there should be an agreement between persons to do one or other of the acts described in the section. The said agreement may be proved by direct evidence or may be inferred from acts and conduct of the parties. There is no difference between the mode of proof of the offense of conspiracy and that of any other offense: it can be established by direct evidence or by circumstantial evidence. But Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down therein are satisfied, the act done by one is admissible against the co-conspirators. The said section reads:

“Where 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 anyone 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 purposes of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

This section, as the opening words indicate, 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 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 conspirators. Once such a reasonable ground exists, anything said, done or written by

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<sup>25</sup> AIR 1965 SC 682: 1963 SCC OnLine SC 26

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 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 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 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’. It can only be used for the purpose of proving the existence of the conspiracy or that the other person was a party to it. It cannot be used 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 analyzed as follows: (1) there shall be a prima facie evidence of 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; and (5) it can only be used against a co-conspirator and not in his favour.”

(Emphasis supplied)

- 54.** From the decisions noticed above, it is clear that one who enters into a conspiratorial relationship is liable for every reasonable foreseeable crime committed

by every other member of the conspiracy in reference to their common intention, whether or not he knew of the crimes or aided in their commission.

**55.** In the instant case, the prosecution with the aid of the testimony of PW-1 has succeeded in establishing that there was a prior meeting of mind between the five partners to the crime to commit an act of stealing the truck and in furtherance thereof they hired the truck of which the two deceased were driver and cleaner. Not only that they carried a '*Gandasa*' which can be used as a weapon of assault to cause grievous injury. The finding is that in furtherance of their plan they hired a truck, separated the driver and cleaner by deception, and thereafter killed the driver and cleaner at separate places to take possession of that truck. The appellant was shown as maintaining vigil at one of the two trucks while his co-participants were trying to dump the driver and cleaner in the bushes to secure possession of the truck. The argument that the appellant was not aware that the driver and cleaner would be killed in the process is not acceptable, because their murder was a foreseeable event. This we say so because when you separate a person from the possession of his property or goods, use of force is a foregone conclusion unless it is done clandestinely, as in the case of theft. Here, the possession was taken not clandestinely but by force. In

such a situation, causing injury to the victim including his murder is a foreseeable event to further the cause for which partners in crime had joined hands. Besides the planned manner in which the crime was committed leaves no shadow of doubt that the appellant, who happens to be brother of one of the co-conspirators, was in cahoots with the others. Therefore, in our view, he was justifiably convicted for criminal conspiracy to commit murder. Issue (b) is decided accordingly.

**56.** We therefore uphold the conviction of the appellant for the offences for which he has been convicted by the Trial Court and the High Court.

**57.** At this stage, we would like to address the fervent appeal of the learned counsel for the appellant to commute the sentence to the period of sentence under gone. In this regard it was urged that admittedly the appellant did not directly participate in the murder of the two deceased; the conviction and sentence under Section 396 IPC is 10 years which has already been served; sentences of convicted co-accused have been remitted by the State; and by now appellant has served sentence for well over 18 years.

**58.** The custody certificate of the appellant dated 06.03.2024 indicates that he has served sentence to the extent indicated below:

- (i) 30.07.1984 to 05.03.1989;
- (ii) 03.03.2009 to 19.05.2009;
- (iii) 05.06.2009 to 22.04.2010;
- (iv) 13.05.2010 to 05.08.2010;
- (v) 26.08.2010 to 20.04.2011;
- (vi) 09.08.2013 to 06.03.2024

**59.** Since thereafter, the appellant has served another two years of sentence. Thus, in all the appellant has served well over 18 years of sentence.

**60.** In a recent decision, ***Munna Moyuddin Shaikh v. State of Gujarat, 2026 INSC 558***<sup>26</sup>, decided on 26<sup>th</sup> May 2026, this Court while affirming conviction under Section 302 IPC, upon finding that the appellant had already served sentence of over 20 years, converted the sentence of imprisonment for life to the period of sentence already undergone by holding that modifying a sentence of life imprisonment to a fixed term sentence is permissible in light of the decision of this Court in ***Union of India v. V. Sriharan***<sup>27</sup> followed in ***Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka***<sup>28</sup>, as long as the sentence imposed is more than 14 years of imprisonment.

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<sup>26</sup> 2026 SCC OnLine SC 939

<sup>27</sup> (2016) 7 SCC 1

<sup>28</sup> (2023) 9 SCC 817

**61.** Having regard to the above decision as also that the appellant Gopi Chand has already suffered over 18 years of sentence, while taking into account that the incident is of 1984 and co-convicts have been given the benefit of remission of sentence, though we maintain the conviction of the appellant, we deem it appropriate to modify the sentence awarded to the appellant to the period of sentence already undergone.

**62.** Accordingly, the appeals are partly allowed to the extent indicated above. The appellant shall be released forthwith, if not required in any other case. Pending application(s), if any shall stand disposed of.

.....J.  
(PAMIDIGHANTAM SRI NARASIMHA)

.....J.  
(MANOJ MISRA)

**New Delhi;**  
**May 29th, 2026**