Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 606 OF 2008

Balkar Singh .... Appellant

VERSUS

State of Haryana .... Respondent

J U D G M E N T

Fakkir Mohamed Ibrahim Kalifulla, J.

1. The present appeal was preferred by A-1 to A-4 in which A-10 is the Appellant was listed along with Criminal Appeal Nos.1005 of 2010, 992 of 2010, 986 of 2010 and SLP (Crl.) No.270 of 2009. All the above appeals were taken up for hearing together. Mr. Sushil Kumar, learned Senior Counsel appearing for the Appellant herein submitted that A-1 to A-4 having served their sentence, nothing survived in their appeals and, therefore, the said four appeals were dismissed as having become infructuous. The present appeal filed by A-10 was, therefore, heard. A-10 was convicted for the killing of one Satinder Sekhon of Ambala in conspiracy with A-1 to A-4 for the offences under Section 120B read with Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC').

2. The brief facts which are required to be stated are that the

deceased was the owner of a petrol pump which he started on 08.03.1992. The occurrence took place on 16.07.1994 at 11.30 a.m. On that day the deceased went to Dhillon Service Station, another petrol pump along with his brother Harinder Singh Sekhon (PW-22) and an employee by the name of Surjit Singh (PW-25). They travelled in a Maruti Car bearing Registration No.HNA 7878. The deceased went to the said petrol pump, which was owned by Ravinder Singh Dhillon (PW-23) who was an eye witness to the occurrence for making payment for the mobil oil which he purchased from there. The deceased along with his brother was sitting inside the cabin of the petrol pump and was conversing with PW-23. A-1 to A-4 i.e. Gurdev Singh, Sohan Singh, Naib Singh and Vakil Singh went to the said petrol pump in a Maruti 800 bearing fake Registration No.CHO1-J-9846 (real Registration No.HR-34-0010) owned by Swaran Singh (PW-36). Two of them asked for petrol and when they were told that the petrol was out of stock, the said two persons went inside the office cabin and asked for some coolant. While PW-23 was requesting the salesman Rajneesh Kumar Dutta (PW-24) to give the coolant, one of the two intruders who was armed with a knife started stabbing the deceased while the other one caught hold of the deceased from behind. In the meanwhile, the two other occupants of the car, one of whom was armed with a gun and another with a *danda,* also entered the office cabin and the one who was holding a gun posed a threat not to raise

any alarm and one of them remarked that the deceased had been taught a lesson for running the petrol pump. The deceased collapsed and the four assailants escaped in the car in which they had come. The murder was thus witnessed by PWs-22, 23, 24 and 25. The FIR was registered on the same day i.e., 16.07.1994 at 2 p.m. for the offence under Section 302 read with Section 34 of the IPC without making a mention to any names in it.

3. On 22.07.1994, A-1 to A-4 surrendered. On 24.07.1994, Inspector Rishal Singh (PW-53) arrested A-5, A-6, A-7 and A-8 i.e. Balkar Singh Gujjar, Gulzar Singh, Mangal Singh and Jasbir Singh. On 27.07.1994, Appellant (A-10) and Kamaljit Singh (A-11) were arrested by PW-53. On 23.07.1994, Dalbir Singh (A-9) surrendered. On 29.07.1994, Faquir Chand (A-12) was arrested and on 08.08.1994, the case was handed over to the Central Bureau of Investigation (hereinafter referred to as 'CBI'). The CBI commenced their investigation on 09.08.1994. Subsequently, Darshan Singh (A-13) was arrested on 15.08.1994. On 22.10.1994, Nirmal Singh (A-14) surrendered. In the meantime, on 15.10.1994, the charge-sheet was filed. Altogether 14 accused were charged for the offences under Sections 120B, 302 read with Section 34, IPC. There were offences against some of the accused under the Arms Act, 1959 as well as under Section 201, IPC. The trial Court convicted A-1 to A-4, A-10 and A-11 for the offences under Sections

120B and 302 read with Section 34, IPC. The rest of the accused, including A-14, were acquitted of the charges under Section 120B as well as Section 302 read with Section 34, IPC. A-1 to A-4, A-10 and A-11 preferred Appeals before the High Court in Criminal Appeal Nos.327 DB of 1997, 283 DB of 1997 and 295 DB of 1997. The appeal preferred by A-10 was Criminal Appeal No.293 DB of 1997 and the one filed by A-11 was Criminal Appeal No.304 DB of 1997. The State through CBI filed Criminal Appeal No.428 DBA of 1997, as against the acquittal of A-14 and five others. The Criminal Revision No.575 of 1997 was filed by the complainant PW-22 against the acquittal of A-14 and thirteen others.

4. By the impugned judgment, the Division Bench of the High Court of Punjab and Haryana dismissed the Appellant's appeal being Criminal Appeal No.293 DB of 1997, as well as, the appeals preferred by A-1 to A-4. The appeal preferred by A-11, namely, Criminal Appeal No.304 DB of 1997 was allowed and he was acquitted of all the charges. The revision preferred by the complainant is Criminal Revision No.575 of 1997 which was also dismissed. The appeal filed by CBI against the acquittal of A-5 and others in Criminal Appeal No.428 DBA of 1997 was also dismissed.

5. We heard Mr. Sushil Kumar, learned Senior Counsel for the Appellant and Ms. Madhurima Tatia, learned counsel for the CBI.

6. In the present appeal, we are concerned only with A-10 who was convicted for the offence under Sections 120B and 302 read with Section 34 along with A-1 to A-4. The entire case against A-10 was based on circumstantial evidence. Therefore, before entering into the discussion about the case of the Appellant and the submissions of the respective counsel, it will be worthwhile to briefly state the principles relating to any conviction to be imposed based on circumstantial evidence, which has been repeatedly laid down by this Court in various decisions. It will be essential to extricate these principles in order to appreciate the approach made by the trial Court, as well as the High Court, while convicting the Appellant based on such circumstantial evidence.

7. In the forefront, we can make a reference to an earlier decision of this Court reported in **Sharad Birdhichand Sarda v. State of Maharashtra** – (1984) 4 SCC 116, wherein a three Judge Bench of this Court has laid down the conditions to be fulfilled before a case against an accused can be said to be fully established. The same has been set out in paragraph 153, which reads as under:

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (*1*) the circumstances from which the conclusion of guilt is to be drawn should be fully established.
>
> It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a

legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in *Shivaji Sahabrao Bobade* v. *State of Maharashtra* where the following observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

"Certainly, it is a primary principle that the accused *must* be and not merely *may* be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(*2*) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(*3*) the circumstances should be of a conclusive nature and tendency,

(*4*) they should exclude every possible hypothesis except the one to be proved, and

(*5*) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

(Emphasis added)

8. In the recent times, the above said principles have been followed and applied by this Court in the decisions reported in **Arvind Kumar Anuplal Poddar v. State of Maharashtra** – (2012) 11 SCC 172 and **Shanti Devi w/o Shanker Lal v. State of Rajasthan** – (2012) 12 SCC 158. The relevant principles can be culled out in **Shanti Devi** (supra) from paragraphs 10 and 10.1 to 10.4 which are as under:

"10. Having heard the learned counsel for the respective parties and having bestowed our serious consideration to the judgment impugned before us and other material papers, as it is a case of circumstantial evidence, we wish to quote the well-settled principles laid down by this Court in various decisions which are to be applied in order to examine the conclusions arrived at by the courts below while convicting

the accused based on circumstantial evidence. The principles laid down in those decisions can be mentioned before finding out whether or not the conviction and sentence on the . Appellant can be held to have been established as stated in the judgment of the High Court as well as that of the learned trial court. The principles can be set out as under:

10.1. The circumstances from which an inference of guilt is sought to be proved must be cogently or firmly established.

10.2. The circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused.

10.3. The circumstances taken cumulatively must form a chain so complete that there is no escape from the conclusion that within all human probability, the crime was committed by the accused and none else.

10.4. The circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.'"

(Emphasis added)

9. Keeping the above stated legal principles relating to a case based on circumstantial evidence in mind, when we consider the submissions of the respective counsel, Mr. Sushil Kumar, learned Senior Counsel appearing for the Appellant after referring to the genesis of the case and the various dates on which different accused were taken into custody by the police, the transfer of the case from the regular police to the CBI and the charge-sheet filed against the accused, pointed out that the charge against the Appellant along with A-5 to A-14 were under Section 120B as well as Section 302 IPC, while A-1 to A-4, barring A-2, were charged under Sections 120B and 302 read with Section 34 IPC. A-2 was charged under Section 302 simplicitor along

with Section 120B, IPC. The learned Senior Counsel submitted that while A-1 to A-4 having been charged under Section 302 read with Section 34, IPC and were convicted for the said offence based on the account of eye witness, the case of the prosecution as against A-5 to A-14 mainly rest upon the charge under Section 120B, IPC for the alleged killing of the deceased for being convicted under Section 302, IPC. The learned Senior Counsel further pointed out that the Appellant was linked with A-11 and in a higher perspective with A-14 and submitted that A-14 was acquitted by the trial Court and A-11 was acquitted by the High Court. By referring to the said conclusions of the trial Court and the High Court as regards the complicity of A-11 and A-14 along with A-10 which resulted in the acquittal of A-11 and A-14, the learned Senior Counsel contended that the conviction of A-10 by singling him out of the said group was not supported by any legally acceptable evidence or principles of law.

10. The learned Senior Counsel prefaced his submission by stating that immediately after the surrender on 22.07.1994 by A-1 to A-4, any confession before the State police could not have been relied upon as the same was hit by Section 25 of the Evidence Act, 1872. We find force in the said submission. Therefore, the learned Senior Counsel contended that if the conviction of A-10 was to be upheld based on circumstantial evidence, the basic principles, namely, the conclusive proof of the chain of circumstances as against the Appellant should

have been established and the said proved circumstances should have led to the only hypothesis of the guilt of the Appellant and not the contrary. The learned Senior Counsel, by referring to the findings of the learned trial Judge as well as that of the High Court by which such of those vital circumstances as against the Appellant having been found to have been not proved by any legally acceptable evidence contended that the conviction of the Appellant by the trial Court and the confirmation of the same by the High Court was erroneous and against the legal principles and consequently the appeal should be allowed. He, therefore, contended that when the accused were proceeded against under Section 120B, IPC and such of those accused who were implicated along with the Appellant were all acquitted of the charge under Section 120B, IPC there was no scope to convict the Appellant alone.

11. As against the above submissions, Ms. Madhurima Tatia, learned Standing Counsel for the CBI contended that there were distinguishing features in the case of the Appellant as compared to A-11 and A-14 and, therefore, the exclusion of A-14 from the charge under Section 120B, IPC by the trial Court and A-11 by the High Court from the said charge and their consequential acquittal can have no bearing on the conviction of the Appellant. The learned counsel in that context referred to the findings of the trial Court as well as the High Court based on the material evidence, namely, the earlier friendly

relationship of the Appellant with the deceased and A-14, the subsequent improvement in the status of A-14 which enabled him to acquire vast extent of wealth, the lucrative business developed by the deceased which provided regular source of livelihood for him while the status of the Appellant remained precarious, which in course of time created the heartburn and the motive for eliminating the deceased. The learned counsel contended that the overwhelming evidence, namely, the suit preferred by the deceased as against the Appellant, as well as, certain other parties in connection with the petrol pump run by him at Ambala, the suit being filed by the Appellant himself as against the deceased with a view to prevent him from running the said business and the failure in his attempt to get a share in the petroleum business, were all circumstances which were found proved individually as against the Appellant and formed a sound motive for the killing of the deceased. The learned counsel also pointed out that apart from the above evidence, A-1 was his nephew who was also mainly attending to the business activities of the Appellant and, therefore, the engagement of A-1 by the Appellant for the killing of the deceased with the help of A-2 to A-4 was satisfactorily established. The learned standing counsel for CBI, therefore, contended that the judgment of the Division Bench of the High Court does not call for interference.

12. Having heard learned counsel for the Appellant, as well as, the respondent and having perused the judgment of the trial Court and the

High Court, while referring to the submission made on behalf of the CBI we have noted that the said submission categorized the 14 accused in three groups for the purpose of the conspiracy levelled against them. In the first group, A-14 and A-10 were linked together. In fact according to the CBI, of the two leading conspirators, namely, A-14 and A-10, A-14 was supposed to be the head conspirator while the Appellant (A-10) was the executioner. At this juncture, it is relevant to state that though A-14 was acquitted by the trial Court, which was challenged by the prosecution before the High Court, the High Court declined to interfere with the acquittal of A-14 and the State has not chosen to challenge the same in this Court. The acquittal of A-14 has, therefore, become final and conclusive.

13. As far as the second group of conspirators was concerned, according to the CBI, it related to A-5, A-6, A-7, A-8, A-9, A-11 A-12 and A-13, all of whom except A-11 were acquitted by the trial Court of the charge of conspiracy. However, A-11 was acquitted by the High Court. Here again, the State has not chosen to file any appeal against the acquittal of A-11 which has, therefore, become final and conclusive.

14. The third group of conspirators, namely, A-1 to A-4 were stated to be contract killers. According to the CBI, the motive for each of the three groups in the killing of the deceased was different. With respect

to the first group, it was contended that the motive was to acquire the petrol pump and for that purpose eliminate whoever that came in their way. This, therefore, resulted in the killing of the deceased. As far as the second group was concerned, it was simply stated that the said group merely helped the first group of conspirators, being their close friends. Lastly, as far as the third group of conspirators was concerned, it was contended that being professionals, their only motive was to make money and nothing else.

15. With the above three pronged tale of conspiracy projected against the accused, the trial Court found no acceptable material evidence to support the conspiracy as against A-5 to A-9 and A-12 to A-14. Thereby, one substantial group of conspirators in the second group as well as the so-called head conspirator were also found to be not part of the conspiracy alleged against them. Though the State thought it fit to challenge the acquittal of the so-called head conspirator falling under the first group, the State accepted the acquittal of the other group of conspirators who fell under the second group. In that process what remained was the alleged conspiracy as against the Appellant (A-10), A-11 and A-14. As far as A-1 to A-4 are concerned i.e. the third group, it is true to a very great extent that they were found to have murdered the deceased jointly with a common intention in the presence of eye witnesses which was rightly relied upon by the trial Court as well as by the High Court. Therefore, there is no difficulty in confirming the

conviction of the said group of accused who directly participated in the killing and who were rightly convicted under Section 302 read with Section 34, IPC.

16. With the above said prelude, when we examine the case of the Appellant, we have to necessarily consider the submission of the learned Senior Counsel for the Appellant with all relevant circumstances which were relied upon by the prosecution and mainly focused against the Appellant along with A-11 and A-14, in particular linking with A-14. In fact, the trial Court having found no conclusive link in the chain of circumstances to link A-14 along with the Appellant and A-11 stated extensively that the conduct of A-10 and A-11 in running away after the killing of the deceased on 16.11.1994 till they came to be arrested on 27.07.1994 when considered along with other relevant circumstances proved the guilt of the A-10 and A-11 along with A-1 to 4. While referring to the said conduct of the Appellant along with A-11 in moving from one place to another after the killing of the deceased and in that pursuit the earlier close relationship of the Appellant along with A-14 prior to the setting up of the petroleum business by the deceased, the attempted conspiracy at Kala Amb earlier which did not materialize, the telephone contact of the Appellant with the employee of A-14 in between 16.07.1994 and 27.07.1994, the relationship of the Appellant with A-1 were all considered. But even the findings of the trial Court with reference to

many of the above circumstances were not so very foolproof to show a chain of circumstances without any break and, therefore, we feel that a far more serious consideration requires to be made. Further, when we perused the impugned judgment of the High Court, we find that there were certain definite findings highlighting deteriorating factors with reference to the chain of circumstances in order to accept the case of the prosecution.

17. The learned Senior Counsel for the Appellant subsequently drew our attention to the concluding arguments of the CBI before the trial Court based on the various circumstances placed before the trial Court to contend that according to the prosecution, A-14 was clamouring to be the ultimate beneficiary by getting a share in the business developed by the deceased which thereby formed the strongest motive to eliminate him and that the same was well planned and executed with the full support of the Appellant who was fully associated with him. Such association was stated to be from the very beginning, i.e. even before A-14 developed a foot-hold in politics and subsequently when he was holding the status of a minister handling health and social welfare. While referring to the said submission made on behalf of the prosecution before the trial Court, the learned Senior Counsel pointed out that one of the vital circumstances, namely, the telephone call alleged to have been made by the Appellant on the next day of occurrence, namely, 17.07.1994 to PW-28 who was the servant of A-14

at Chandigarh from whom the Appellant enquired about the whereabouts of A-1 at Mussoorie by finding it out from the residence of A-14 was held to be not established.

18. The trial Court has given a categoric finding to the effect that the evidence of Mohan Lal (PW-39) as well as Anoop Gupta (PW-46) did not support the said version of the prosecution and that there was no evidence to prove that the Appellant left Ambala with A-11 on 16.07.1994 in his car for Karnal or that on the way he made any telephone calls to the residence of A-14 at Ambala and Chandigarh. We find a substantial dent in the case of the prosecution having regard to the said finding as arrived by the trial Court based on the evidence placed before it by the prosecution.

19. One other circumstance which was placed before the trial Court related to the arrest of A-10 and A-11 as spoken to by Shri Satpal Sehgal (PW-42). According to the prosecution, PW-42 was the driver of the car in which Appellant, A-11 and the other accused, namely, A-6 and A-7 travelled from Ambala on 16.07.1994 for Karnal and that they surrendered before the police at around 7/8 p.m. on 26.07.1994. In fact, by relying upon the evidences of Arun Kumar Handa (PW-28), PW-39 and PW-46, the trial Court reached a definite conclusion that there was no evidence to prove that the Appellant left Ambala with A-6, A-7 and A-11 on 16.07.1994 in his car for Karnal or that he made

any telephone call to the residents of A-14 at Ambala and Chandigarh. While considering the question as to on what date the A-10 and A-11 were taken into custody, the trial Court while referring to the version of PW-42 noted that as per the version of PW-53, Inspector Rishal Singh, the Appellant was taken to the Police Station Sadar, Ambala on 27.07.1994 at 11.30 a.m. and that the version as spoken to by PW-42 with regard to the alleged surrender on 26.07.1997 itself was not true. Therefore, if as per the version of PW-53 Inspector Rishal Singh, Appellant and A-11 were arrested on 27.07.1994, it will be wholly unsafe to rely upon the version of PW-42 as rightly contended by the learned Senior Counsel for the Appellant.

20. As regards the allegation that A-14 was the head conspirator on the footing that he had the direct motive for killing the deceased since the deceased refused to succumb to his illegal pressure was concerned, the trial Court rejected the said circumstance as against A-14 by a giving detailed reasoning. The trial Court held that there was no evidence implicating A-14 along with the other accused in order to conspire together to commit the murder of the deceased, since there were no evidence of any act or words said by them from which their implicity in any such conspiracy could be inferred. The trial Court even while considering the earlier conspiracy stated to have been organized at Kala Amb, held that the same was not proved and that there was no acceptable evidence through any witness to prove the conspiracy of

A-14 along with the others. The trial Court, therefore, found that the evidence available on record only showed that the deceased, A-14 and A-10 were all in friendly terms and nothing else.

21. Having noted the above referred to definite conclusions of the trial Court, we also find that the trial Court took the view that the theory of conspiracy as against A-5 to A-9 and A-12 to A-14 was not established and that the case of A-10 and A-11 stood on a different footing. For taking the said view the reasons which weighed with the trial Court were based on the circumstances, namely, that A-10 and A-11 were moving together and running away right from 16.07.1994, their arrest on 27.07.1994 pursuant to their surrender, the running away of A-10 and A-11 from place to place to evade their arrest, A-10 filed a suit against the deceased for staying the operation of the petrol pump, A-10 had a grievance against the deceased in that respect, that the first accused who was taking active part in the actual commission of the murder of the deceased was the nephew of the Appellant, that by virtue of his close relationship he was looking after the market of the Appellant and that both A-10 and A-11, were on their run immediately after A-1 to A-4 were remanded to police custody. Therefore, the above acts of Appellant and A-11 pointed out towards their conspiracy with the accused A-1 to A-4 in the elimination of the deceased.

22. Having noted the various findings and conclusions reached by the

trial Court relating to the accused, we find the following relevant circumstances were relied upon by the prosecution to prove the guilt against the accused. The circumstances were:-

(a) A-14, A-10 and the deceased were very good friends at one point of time.

(b) In course of time, A-14 developed a foothold in politics and ultimately reached a stage when he became a Minister in the State Government holding the portfolio of Health as well as Revenue.

(c) The deceased by his own efforts was able to set up a petrol pump in Ambala.

(d) A-14 along with A-10 desired to have a share in the petroleum business developed by the deceased, which was not acceptable to the deceased.

(e) As the deceased did not yield to the pressure of A-14 along with A-10, there was a conspiracy mooted in a place called 'Kala Amb' to eliminate the deceased earlier, which was not successful.

(f) A-10 filed a suit for permanent injunction against the deceased to restrain him from running the petrol pump.

(g) A-10 set up A-1 along with A-2 to A-4 for the killing of the deceased as A-1 happened to be his nephew and was also taking care of all the business activities of the Appellant.

(h) As part of the conspiracy, A-10 procured the car from PW-36 and the gun from A-9 and handed over both to A-1 for executing the plan of killing the deceased.

(i) After the deceased was assassinated on 16.07.1994 and subsequently A-1 to A-4 surrendered before the police on 22.07.1994, A-10 was running away along with A-11 from place to place to evade being arrested by the police.

(j) PW-42 was the driver who was driving the vehicle in which A-10 and others were travelling after 16.07.1994, till they were taken into custody.

(k) While he was on the run, the Appellant telephoned the official residence of A-14, talked to his employee PW-36 to find out as to where A-1 to A-4 were staying in Mussoorie.

(l) Finding no way out, ultimately Appellant (A-10) along with A-11 surrendered on 27.07.1994 before PW-53 Rishal Singh, who was associated with the investigation, though according to PW-42, the driver, the surrender took place on 26.07.1994 at around 7/8 p.m.

23. When the above circumstances were relied upon, the trial Court as noted earlier, has found that A-14 had no role to play in the conspiracy and there was no clinching circumstance to rope in A-14 in the murder of the deceased. The trial Court also found that the other accused, namely, A-5 to A-9 and A-12 and A-13 also did not play any role in the alleged conspiracy and they were acquitted. Ultimately, A-1 to A-4 were found guilty of the killing of the deceased by virtue of the direct evidence through PWs-22, 23 and 25, namely, the brother of the deceased, the owner of the Dhillon Fuel Station and the salesman Surjit Singh. As far as A-10 and A-11, namely, Appellant and Kamaljit Singh @ Lalli are concerned, though the trial Court put both of them in the same pedestal while finding them guilty of conspiracy, as well as, the consequential murder of the deceased, the High Court gave a clean chit to A-11. The trial Court placed the Appellant (A-10) and A-11 in an identical situation by virtue of the singular fact that both of them were running away after the surrender of A-1 to A-4 in order to escape from the clutches of the police. However, the High Court has rightly found that there was absolutely nothing against A-11 for the charge of conspiracy under Section 120B, IPC without which there was no question of roping him into the charge of murder under Section 302, IPC.

24. In the light of the above ultimate conclusions, when we analyse the impugned judgment of the High Court in holding that the Appellant

had every role to play in the conspiracy along with A-1 to A-4 and the ultimate killing of the deceased, we find that the said conclusion was based on the factors which have been succinctly stated in the following paragraphs of the Division Bench judgment:

> "Can it be said that what is true about Nirmal Singh was also true about Balkar Singh Chudiala. This accused was the man who provided the gun and the car to the assailants. He had also escaped after the occurrence, to remain in hiding for 10 days before surrendering. It can be said that Balkar Singh Chudiala was also on the run because he knew that he would be named as a conspirator for his friends murder. Balkar Singh Chudiala had more at stake than Nirmal Singh. The latter was a Minister and enjoyed political power and patronage, whereas the former was a mere hanger-on, a person who had been unable to derive any behefit from Satinder Sekhon or from his petrol pump. Nirmal Singh had got political power, Satinder Sekhon the petrol pump he desired but Balkar Singh Chudiala got nothing. Therefore, the motive for Balkar Singh Chudiala to get Satinder Sekhon murdered was strong. In actual fact, neither Balkar Singh Chudiala nor Nirmal Singh had ever been upto any good but at least Nirmal Singh had acquitted a position in the Government which gave him plenty of opportunity to acquire wealth. Balkar Singh Chudiala was a failure and a drop-out. The motive for Balkar Singh Chudiala to conspire to murder Satinder Sekhon was strong and convincing.
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> Coming to the case of Kamaljit Singh @ Lalli, this accused had merely gone along with Balkar Singh Chudiala after the occurrence but had no personal enmity or grudge against Satinder Sekhon. The question to be considered in Kamaljit Singh's case is whether his accompanying the main accused would amount to such conduct as would implicate him as a conspirator. We do not think that such inference could be drawn."
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> **(underlining is ours)**

25. When we refer to the abovesaid paragraph of the Division Bench and the factors which weighed with the trial Court in singling out the

Appellant for the killing of the deceased along with A-1 to A-4 based on a conspiracy, we find that the trial Court took into account the relationship of the Appellant with A-1 and his running away from place to place after the killing of the deceased as a more relevant factor. The Division Bench relied upon the fact of the Appellant providing the gun and the car to the assailants apart from his attempt to escape after the occurrence by way of hiding and the further fact that among the three friends, namely, A-14, A-10 and the deceased, the Appellant alone did not gain much either financially or by any status and that formed a greater motive for the Appellant to eliminate the deceased.

26. Therefore, the question for consideration is whether those factors can be held to have formed sufficient circumstances or to put it more precisely clinching circumstances established in the manner known to law to prove the guilt of the Appellant for the conspiracy and the consequential killing of the deceased. It will be worthwhile to recapitulate the conceptual noting made by the trial Court as regards the principles of conspiracy and the circumstantial evidence when relied upon in a criminal case. Those concepts noted by the trial Court were as under:

> "**351.** It is settled law that while appreciating circumstantial evidence, the court must adopt a very cautions approach and should record a conviction only if all the links in the chain are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. Great care has to be taken in evaluating

circumstantial evidence and if the evidence relied on is reasonably capable of two inferences, the one in favour of the accused must be accepted. The circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt. In order to prove the charge of conspiracy it is necessary that the prosecution should prove the names of the place or places where it was hatched, names of the persons hatching it and how was it hatched."

(Underlining is ours)

27. It has been rightly noted by the trial Court that while appreciating circumstantial evidence, the Court must adopt a very cautious approach and record a conviction only if all the links in the chain of circumstances are complete pointing to the guilt of the accused and every hypothesis of innocence is capable of being negatived on evidence. It also noted that great care has to be taken in evaluating the circumstances and if the evidence relied upon is reasonably capable of two inferences, the one in favour of the accused must be accepted and the circumstances relied upon must be found to have been fully established and the cumulative effect of all the facts so established must be consistent only with the hypothesis of the guilt. Similarly, as regards the conspiracy, the trial Court has rightly noted that in order to prove the charge of conspiracy, it is necessary that the prosecution should prove the names of the place or places where it was hatched, names of the persons hatching it and how it was hatched. We find that the abovesaid understanding of a case to be appreciated when it was

based on circumstantial evidence clubbed with the allegation of conspiracy was perfectly noted by the trial Court.

28. However, we find that while applying the principles noted by it, the trial Court as well as the Division Bench of the High Court have completely given a go-bye to the principles and in fact the Division Bench took a tangent approach and gave a finding conflicting with its own conclusions relating to the circumstances which were relatable to the Appellant. The High Court rightly noted the three circumstances which were really relevant in order to rope in the Appellant to the conspiracy and the consequential killing of the deceased. Those circumstances were the conduct of the Appellant in having procured the car from PW-36 and the gun from A-9 and handing over both to A-1 his nephew. In so far as the said circumstance was concerned, the Division Bench has held as under:

> "The sixth circumstance was Balkar Singh Chudiala procuring the car from Swaran Singh and the gun from Dalbir Singh, and handing over both to Gurdev Singh. Both the circumstances were found to be without supporting evidence as Swaran Singh did not support the prosecution. Recovery of Dalbir Singh's gun from Gurdev Singh, though established did not prove that Gurdev Singh had been given the gun by Balkar Singh Chudiala. The part of Gurdev Singh's disclosure statement that he got the gun from Balkar Singh Chudiala could not be proved in this manner."
>
> **(underlining is ours)**

29. The other circumstance was the escaping of the Appellant along with A-11 to different places. With reference to the said circumstance also the Division Bench has held that there was no reliable evidence to prove the said circumstance, which finding has been made in the following paragraph:

> "The nineteenth circumstance, Balkar Singh Chudiala and Kamaljit Singh escaping to Doraha, Ludhiana, Kot Kapura and then to Chandigarh to avoid arrest. He also stayed at Nirmal Singh's official residence at 118, Sector 8, Chandigarh. The learned Judge held that there was no reliable evidence of Nirmal Singh harbouring Balkar Singh Chudiala."

30. The one other circumstance noted was the twentieth circumstance which again related to the gun of A-9 which was recovered at the instance of A-1, the nephew of the Appellant. While relating to the said circumstance, the conclusion of the Division Bench was as under:

> "The twentieth circumstance relied upon by the prosecution was of the gun provided by Dalbir Singh to Balkar Singh Chudiala for the murder and the same gun being used by Gurdev Singh to terrorize the witnesses. The gun had been concealed by Gurdev Singh at his tubewell and recovered from there on July 22, on the basis of his disclosure statement. <u>The learned Judge disbelieved the procurement of the gun by Balkar Singh Chudiala from Dalbir Singh, Balkar Singh Chudiala handing it over to Gurdev Singh, because though this was a part of Gurdev Singh's disclosure statement it had not led to the discovery of any fact</u>."
>
> **(underlining is ours)**

31. One other circumstance, which was noted as the last circumstance, was the so-called telephone conversation as between

Jagmohan Singh Bhalla (PW-17) and A-13, i.e. after the killing of the deceased with reference to which also the Division Bench held that it was wholly insufficient in so far as it related to A-13. The said circumstance has been dealt with by the Division Bench as under in the following paragraph:

> "The last circumstance relied upon by the prosecution regarding the conspiracy between all the 14 accused was that Darshan Singh had telephoned Jagmohan Bhalla (PW17) on July 17 to inform him that Satinder Sekhon had been murdered. Jagmohan Bhalla replied that he had been asked to lure Satinder Sekhon to Kala Amb only to thrash him but Darshan Singh told him that actually Satinder Sekhon had been called to Kala Amb to be killed. This circumstance was held to be insufficient to establish that Darshan Singh was a member of the conspiracy."

32. After having reached the above conclusions, unfortunately the Division Bench took a conflicting finding to its own earlier conclusions and came to an abrupt conclusion that Appellant conspired with A-1 to A-4 to eliminate the deceased. The said conclusions have been stated as under by the Division Bench:

> "Can it be said that what is true about Nirmal Singh was also true about Balkar Singh Chudiala. This accused was the man who provided the gun and the car to the assailants. He had also escaped after the occurrence, to remain in hiding for 10 days before surrendering. It can be said that Balkar Singh Chudiala was also on the run because he knew that he would be named as a conspirator for his friends murder. Balkar Singh Chudiala had more at stake than Nirmal Singh. The latter was a Minister and enjoyed political power and patronage, whereas the former was a mere hanger-on, a person who had been unable to derive any behefit from Satinder Sekhon or from his petrol pump. Nirmal Singh had got political power, Satinder

Sekhon the petrol pump he desired but Balkar Singh Chudiala got nothing. Therefore, the motive for Balkar Singh Chudiala to get Satinder Sekhon murdered was strong. In actual fact, neither Balkar Singh Chudiala nor Nirmal Singh had ever been upto any good but at least Nirmal Singh had acquitted a position in the Government which gave him plenty of opportunity to acquire wealth. Balkar Singh Chudiala was a failure and a drop-out. The motive for Balkar Singh Chudiala to conspire to murder Satinder Sekhon was strong and convincing.

Coming to the case of Kamaljit Singh @ Lalli, this accused had merely gone along with Balkar Singh Chudiala after the occurrence but had no personal enmity or grudge against Satinder Sekhon. The question to be considered in Kamaljit Singh's case is whether his accompanying the main accused would amount to such conduct as would implicate him as a conspirator. We do not think that such inference could be drawn."

33. Therefore, we find that the earlier conclusions of the Division Bench on the 6th, 19th and the 20th circumstance was rightly drawn, inasmuch as there was total lack of evidence to hold that the Appellant (A-10) was responsible for procuring the car from PW-36 and the gun from A-9 for handing it over to A-1. As far as the escaping of A-10 along with A-11 was concerned, what applied to A-11 should equally apply to A-10, namely, the Appellant. According to the prosecution, A-14 was the head conspirator as it was he who developed a great ill-will to eliminate the deceased as the deceased was not inclined to give a share to him in the petroleum business. The ultimate conclusion was drawn by the trial Court as well as the High Court based on the evidence placed before it that the said circumstance was not established. We, therefore, fail to understand as to how A-10 can stand

alone to conspire and to kill the deceased merely on the ground that A-10, A-14 and the deceased were good friends once and that while the other two were well placed in life in course of time, A-10 was found to be a drop out. In fact even according to the prosecution A-1 the nephew of the Appellant was taking care of the market of the Appellant and that the Appellant himself was a Chemical engineer and had his own business ventures. If that be so, the conclusion drawn by the High Court that the Appellant was a drop out was wholly unsupported by evidence placed before the Court. The only other circumstance which can be niggled against the Appellant was a suit stated to have been filed by him as against the deceased for permanent injunction in order to restrain him from running the petroleum business. We are afraid that by relying upon such a singular circumstance, the Appellant can be held to have carried out a conspiracy, when various other circumstances levelled against the accused had no link with each other in order to hold that the only hypothesis that can be drawn would be the guilt of the Appellant.

34. As far as the conspiracy was concerned, there was no specific evidence as to who were all the conspirators, where and when the conspiracy was hatched, what was the specific purpose of such conspiracy and whether it was relating to the elimination of the deceased. In other words, the basic ingredients to support the theory of conspiracy was totally lacking either in the form of material evidence

or otherwise. None of the circumstance had any iota of relevance to the alleged conspiracy either at the instance of A-10 or A-14 against whom both the Courts gave a clean chit. There was nothing to suggest that A-10 held a conspiracy with A-1 to A-4. On the other hand, the specific case of the prosecution was that at the instance of A-14, the head conspirator, A-10 executed the plan. When A-14 was found to have played no role in the whole case, there is no scope to pin down A-10 alone to the theory of conspiracy.

35. Even going by the conclusions of the trial Court and the Division Bench of the High Court, the allegation of conspiracy levelled against A5 to A9 and A11 to A14 was ruled out. Then it remained against A1 to A4 and A10. Even the earlier conspiracy alleged to have been planned at Kala Amb was held to be not established. As far as A1 to A4 and A10 were concerned, there was no iota of evidence to link them to any act of conspiracy leave alone, the place, time and the nature of conspiracy. Therefore, once the charge of conspiracy under Section 120B IPC was totally ruled out against A10, we fail to understand as to how he alone could be charged and found guilty of that charge and consequently of the charge under Section 302 read with Section 34 IPC.

36. Having regard to our above conclusions, we are convinced that the charge of conspiracy levelled against the Appellant under Section 120B, IPC and the further charge under Section 302 read with Section

34, IPC was not conclusively proved and consequently, the conviction and sentence imposed on the Appellant cannot be sustained. The appeal, therefore, stands allowed. The conviction and sentence imposed on the Appellant is set aside.

.....J.
[Fakkir Mohamed Ibrahim Kalifulla]

.....J.
[Abhay Manohar Sapre]

New Delhi;
November 17, 2014.

ITEM NO.1A (For Judgment) COURT NO.8 SECTION IIB

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 606/2008

BALKAR SINGH **Appellant(s)**

VERSUS

STATE OF HARYANA **Respondent(s)**

Date : 17/11/2014 **This appeal was called on for pronouncement of judgment today.**

For Appellant(s) **Mr. Shish Pal Laler, Adv.**
Mr. Sanjay Jain, AOR

For Respondent(s)
Mr. B. Krishna Prasad, AOR

Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Abhay Manohar Sapre.

For the reasons stated in the signed reportable judgment, the appeal is allowed. The conviction and sentence imposed on the appellant is set aside. Bail bonds of the appellant stand discharged.

(SANJAY KUMAR-I) **(KALYANI GUPTA)**
COURT MASTER **COURT MASTER**

(Signed "Reportable" judgment is placed on the file)