

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1261 OF 2009

INDRA DALAL

.....APPELLANT(S)

VERSUS

STATE OF HARYANA

.....RESPONDENT(S)

WITH

CRIMINAL APPEAL NO. 1620 OF 2009

AND

CRIMINAL APPEAL NO. 1189 OF 2011

J U D G M E N T

A.K. SIKRI, J.

First Information Report (FIR) No. 99 dated May 24, 2001 was registered at Police Station: City Dadri, Haryana. In this FIR, five persons were implicated and made accused for committing the murder of one Nand Karan (hereinafter referred to as the 'deceased'). Out of them, three appellants are before us who were tried together and convicted for the said offence by the Sessions Court vide judgment dated April 11, 2008, followed by

the order of sentence dated April 12, 2008 sentencing them for life imprisonment and also to pay a fine of ₹10,000 each for commission of the offence punishable under Section 120-B read with Section 302 of the Indian Penal Code, 1860. In default of payment of fine, it was directed that they would undergo simple imprisonment for a period of one year each. One more person was also made accused and tried with these appellants. However, he was acquitted of the charges framed against him. Fifth person, Udeyveer @ Udey @ Sandeep, who was also an accused in the said charge-sheet, was convicted by a separate judgment pronounced on the same date, i.e. on April 11, 2008, and given the identical sentence. All the four convicted persons appealed to the High Court. The High Court dismissed these appeals affirming the conviction and sentence passed by the learned Additional Sessions Judge-II, Bhiwani. Udeyveer has not preferred any further appeal. The three appellants before us in these three appeals, however, chose to challenge the judgment of the High Court by filing special leave petitions, in which leave was granted earlier.

- 2) Now, we take note of the case of the prosecution, in brief, which can be safely culled out from the impugned judgment of the High

Court as there is no dispute that the said judgment correctly records the prosecution version:

- 3) The deceased Nand Karan, a retired Master, and his wife Suraj Kaur, were residing in the house known as '*Lal Kothi*' situated on the Loharu Road, Dadri. On May 24, 2001, at about 8.00 p.m., the deceased, his wife and his brother Harish Chander Godara were present in the house. While the deceased's wife was watering the plants in the lawn, the deceased inside the room and his brother on the roof, one young boy aged about 22-25 years, came on a scooter. He told Suraj Kaur that he had come from Rohtak and wanted to meet Master Nand Karan. When she was talking with that boy, the deceased came out of the house to the gate. Suraj Kaur told the deceased that a boy had come to meet him. Soon thereafter, the boy took out a pistol from his pant's pocket and fired at the deceased on his chest. Another shot was fired at the head of the deceased. The deceased fell down crying. After hearing the sound of shots fired, Harish Chander Godara, brother of the deceased, immediately came down to the spot. After throwing the pistol at the spot, the boy ran away on the scooter on which he came. After the occurrence, many persons, including Suresh Kumar, s/o. Hoshiar Singh, and Jaipal, s/o.

Kamal Singh, reached the spot. After arranging vehicle, they took the deceased to the hospital, where he was declared dead. Dr. H.L. Beniwal (PW-3), who attended the deceased at the hospital, declared him dead and sent a *ruqqa* (Exhibit PE) to the Station House Officer, Dadri Police Station at 9.10 p.m., regarding the dead body being brought by Suresh Kumar and Jaipal.

- 4) In the hospital, statement of Suraj Kaur (Exhibit PA) was recorded by Sub-Inspector Ram Chander (PW-17) on May 24, 2001 at 11.00 p.m. In her statement, she narrated the abovesaid occurrence and further stated that her husband was got murdered by Dr. Indra Dalal, her brother Bijender @ Vijay and Mahabir, through some unknown person, by hatching a conspiracy. The cause of grudge, as stated by her, was that an allegation of murder was levelled by them against her husband, her son Ravinder Kumar and one Sandeep, s/o. Mahabir Singh and in that regard a criminal trial under Section 302 IPC was pending. Her son and Sandeep are in jail in connection with the alleged murder. However, her husband was released on bail about three months back. Due to the said grudge, Indra Dalal, her brother Bijender @ Vijay and Mahabir committed the murder of her husband by hiring a contract killer in a conspiracy. On the basis of the said

statement, FIR (Exhibit PA/1) was registered at Police Station Dadri on May 24, 2001 at 11.10 p.m. Special report of the said FIR was received by the area Magistrate at 12.30 a.m. on May 25, 2001.

- 5) On May 25, 2001, post mortem of the deceased was conducted by Dr. Anil Chaudhary (PW-4), Dr. H.L. Beniwal and Dr. Giri Raj. They found two gun shot injuries on the body of the deceased, one on the chest and the other on the brain. One pallet each was got removed from those injuries. In the post mortem report (Exhibit PF), the cause of death of the deceased was stated to be haemorrhage and shock due to gun shot injury on vital organs.
- 6) The prosecution case, thus, in nutshell is this: One Dipender @ Banti, who was the son of the appellant Indra Dalal and nephew of Bijender, was murdered, in which deceased Nand Karan was implicated along with his sons, namely, Ravinder Kumar and Sandeep, who were even in jail in that connection. In order to take revenge, the appellants Indra Dalal and her brothers Bijender and Mahabir had hatched a conspiracy to kill Nand Karan, for which they enticed Udeyveer and got him murdered through him.
- 7) Investigation was conducted on the basis of the aforesaid FIR. During the investigation, statements of Suresh and Harish

Chander Godara were recorded. Harish Chander Godara mentioned that the registration number of the scooter, on which the assailant Udeyveer came, was HR 20G 1102. The clothes of the deceased, one fired bullet, one cartridge of fired bullet were seized along with certain other articles, on which CFL report was obtained. Post mortem was conducted on the body of the deceased.

8) On May 31, 2001, appellant Bijender was arrested. He allegedly made a disclosure/confessional statement (Exhibit PH) admitting the aforesaid conspiracy and motive for committing the murder of the deceased. On June 02, 2001, appellant Indra Dalal was arrested and she also made a similar disclosure/confessional statement (Exhibit PT). On the same day, another confessional statement (Exhibit PK) was made by Bijender.

9) As per the investigation, Police recorded the statement of one Pradeep Kumar, s/o. Daya Nand, on July 07, 2001, who was a resident of Charkhi Dadri. He stated that on May 27, 2001, he had went to the clinic of the appellant Indra Dalal for medical checkup of his wife. At that time, Bijender came there and both the appellants went inside. When she did not come out for some time, Pradeep Kumar went near the door, which was slightly

open, and heard the talks of both the appellants, as per which Bijender was telling Indra Dalal that he had engaged Udeyveer for killing Nand Karan. During investigation, a cream colour LML scooter bearing registration No. HR 20G 1102 was recovered on July 13, 2001 from the old house of Indra Dalal vide recovery Exhibit PD.

- 10) Thereafter, the other appellant Jaibir was arrested on December 10, 2001, who also gave his disclosure/confessional statement (Exhibit PL) to the same effect as was given by the other two appellants Indra Dalal and Bijender. He further stated that he had given the scooter in question to Udeyveer and Ramesh for that purpose. On his naming Ramesh, he was also arrested and his disclosure/ confessional statement (Exhibit PO) was recorded on December 23, 2001 on the same lines. After investigation, challan was filed against these accused persons, except Udeyveer, who could not be arrested and was declared a proclaimed offender. However, during the pendency of the trial, Udeyveer was also arrested on February 07, 2004. His disclosure/confessional statement (Exhibit PN) was recorded as well.

11) During the trial, in the challan/case filed against these appellants and also against Ramesh, the prosecution examined eighteen witnesses. These include Suraj Kaur/complainant (PW-1), who supported the prosecution version, Harish Chander Godara, brother of the deceased (PW-2), who had also supported the prosecution version, Dr. H.L. Beniwal (PW-3), who had sent *ruqqa* (Exhibit PE) to the Station House Officer, Police Station Dadri, Dr. Anil Chaudhary (PW-4), who conducted the post mortem of the deceased, and Pradeep Kumar (PW-7), who was the alleged witness of conspiracy, but he did not support the prosecution version and was declared hostile. Other witnesses were mostly police officials who proved one or the other disclosure/confessional statements of these accused persons as well as the Investigating Officer who conducted the investigation. Gulab Singh (PW-18), Registration Clerk with the Regional Transport Office, was also produced, who stated that as per the record, Jaibir s/o. Kanshi Ram, was the owner of the scooter which was seized by the Police. In the statements of the accused persons recorded under Section 313 of the Code of Criminal Procedure, 1973, all of them stated that they were innocent and were falsely implicated in the case. They also pleaded that their confessional statements were recorded by putting pressure upon

them to compromise the matter of murder of son of Indra Dalal.

- 12) Supplementary charge-sheet was filed against accused Udeyveer, in which the prosecution examined seventeen witnesses. However, since Udeyveer has not filed any appeal, we are eschewing the discussion pertaining to the evidence appearing against him.
- 13) As mentioned above, the trial court acquitted only Ramesh and convicted all other accused persons and the High Court has affirmed the same. The reading of the impugned judgment of the High Court would disclose that major portion of the judgment is devoted to the alleged role of accused Udeyveer and the Court came to the conclusion that there was sufficient evidence against him proving his guilt, who had actually murdered the deceased. Insofar as the appellants are concerned, admittedly they have not taken active part in the commission of crime, namely, there is no *actus reus*. However, they have been implicated as the accused who actively hatched conspiracy to murder the deceased and for this purpose hired the assassin Udeyveer for a consideration of ₹3,00,000/-. Thus, the central issue in these appeals, *qua* these appellants, is as to whether the prosecution has been able to prove the involvement of the appellants with the aid of Section

120-B of the IPC.

14) As mentioned above, the prosecution had produced one witness, Pradeep Kumar (PW-7), who was allegedly the witness of conspiracy. However, during trial, he did not support the prosecution version and was declared hostile. Therefore, there is no witness to this conspiracy. No doubt, such conspiracies are normally hatched in dark and clandestinely and there may not be any eye witnesses. We have to see from the circumstantial evidence or other evidence produced as to whether such a charge is established or not. In the present case, the conviction is recorded by the trial court and upheld by the High Court against these appellants primarily on the basis of their confessional statements and recovery of the scooter from the house of Indra Dalal. Therefore, it is to be examined as to whether conviction could be sustained on the basis of such statements.

15) Mr. Sushil Kumar, learned senior counsel appearing for the appellants Indra Dalal and Bijender, argued that these confessional statements were admittedly recorded after the arrest of these accused and when these accused were in police custody. Therefore, such statements were inadmissible having regard to the provisions of Sections 25 and 26 of the Indian Evidence Act,

1872. Section 25 of the Evidence Act mandates so, in certain and unequivocal terms, as is clear from the language thereof. It reads as follows:

“25. Confession to police officer not to be proved. - No confession made to a police officer shall be proved as against a person accused of any offence.”

Likewise, Section 26 makes any such statement inadmissible if given when in police custody. It reads:

“26. Confession by accused while in custody of police not to be proved against him. – No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

Explanation. – In this section “Magistrate” does not include the head of a village discharging magisterial functions (in the Presidency of Fort St. George or elsewhere), unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882.”

- 16) The philosophy behind the aforesaid provision is acceptance of a harsh reality that confessions are extorted by the police officers by practicing oppression and torture or even inducement and, therefore, they are unworthy of any credence. The provision absolutely excludes from evidence against the accused a confession made by him to a police officer. This provision applies even to those confessions which are made to a police officer who may not otherwise be acting as such. If he is a police officer and

confession was made in his presence, in whatever capacity, the same becomes inadmissible in evidence. This is the substantive rule of law enshrined under this provision and this strict rule has been reiterated countless by this Court as well as the High Courts.

17) The word '*confession*' has nowhere been defined. However, the courts have resorted to the dictionary meaning and explained that incriminating statements by the accused to the police suggesting the inference of the commission of the crime would amount to confession and, therefore, inadmissible under this provision. It is also defined to mean a direct acknowledgment of guilt and not the admission of any incriminating fact, however grave or conclusive. Section 26 of the Evidence Act makes all those confessions inadmissible when they are made by any person, whilst he is in the custody of a police officer, unless such a confession is made in the immediate presence of a Magistrate. Therefore, when a person is in police custody, the confession made by him even to a third person, that is other than a police officer, shall also become inadmissible.

18) In the present case, as pointed out above, not only the confessions were made to a police officer, such confessional

statements were made by the appellants after their arrest while they were in police custody. In **Bullu Das v. State of Bihar**¹, while dealing with the confessional statements made by accused before a police officer, this Court held as under:

“7. The confessional statement, Ex.5, stated to have been made by the appellant was before the police officer in charge of the Godda Town Police Station where the offence was registered in respect of the murder of Kusum Devi. The FIR was registered at the police station on 8-8-1995 at about 12.30 p.m. On 9-8-1995, it was after the appellant was arrested and brought before Rakesh Kumar that he recorded the confessional statement of the appellant. Surprisingly, no objection was taken by the defence for admitting it in evidence. The trial court also did not consider whether such a confessional statement is admissible in evidence or not. The High Court has also not considered this aspect. The confessional statement was clearly inadmissible as it was made by an accused before a police officer after the investigation had started.”

- 19) Notwithstanding the same, the trial court as well as the High Court had relied upon these confessions on the basis of these statements, coupled with '*other connected evidence available on the record*', particularly the recovery of the scooter from the old house of accused Indra Dalal and the disclosure/confessional statement (Mark A) made by Jaibir in another case bearing FIR No. 718 dated November 30, 2001 registered under Sections 420/407/463/471/120-B IPC and Sections 25/54/59 of the Arms

¹

(1998) 8 SCC 130

Act, 1959 registered at Police Station: Civil Lines, Hisar, which has been proved by Inspector Ram Avatar (PW-15).

20) What follows from the above reasoning given by the High Court is that the confessional statements were supported with other evidence. Though the High Court has mentioned '*other connected evidence*', what is relied upon is the recovery of scooter and the disclosure/confessional statement made by Jaibir in some other case. No other evidence is pointed out by the High Court. On our specific query to the learned counsel for the State during the arguments, he also conceded that the only '*connected evidence available on record*' was the recovery of scooter and the confessional statement (Mark A) made by Jaibir in FIR No. 718 dated November 30, 2001. This approach of the High Court relying upon the confessional statements, otherwise inadmissible, with the aid of '*other connected evidence*' is contrary to law. We harbour serious doubts about basing criminal punishment on such an unapproach, not permissible in law. This conclusion gets strengthened as we proceed to discuss the nuances of legal principles and its application to the factual canvas herein.

21) The question is as to whether these could be taken into consideration to believe the confessional statements by the

appellants, which were otherwise inadmissible in law.

- 22) The only portion of the information contained in the confessional statements that may be proved is provided under Section 27 of the Evidence Act, which reads as under:

“27. How much of information received from accused may be proved. - Provided that, when any fact is proved to be discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.”

- 23) It is clear that Section 27 is in the form of proviso to Sections 25 and 26 of the Evidence Act . It makes it clear that so much of such information which is received from a person accused of any offence, in the custody of a police officer, which has led to discovery of any fact, may be used against the accused. Such information as given must relate distinctly to the fact discovered. In the present case, the information provided by all the accused/ appellants in the form of confessional statements, has not led to any discovery. More starkly put, the recovery of scooter is not related to the confessional statements allegedly made by the appellants. This recovery was pursuant to the statement made by Harish Chander Godara. It was not on the basis of any disclosure statements made by these appellants. Likewise, insofar as

confessional statement (Mark A) allegedly given by Jaibir is concerned, that is again in another FIR. We shall come to its admissibility separately. Therefore, the situation contemplated under Section 27 of the Evidence Act also does not get attracted. Even if the scooter was recovered pursuant to the disclosure statement, it would have made the fact of recovery of scooter only, as admissible under Section 27 of the Evidence Act, and it would not make the so-called confessional statements of the appellants admissible which cannot be held as proved against them.

24) At this juncture, let us discuss as to whether the disclosure/ confessional statement (Mark A) made by appellant Jaibir in another case would be relevant to prove the charge of conspiracy. It would be pertinent to point out that this statement is made by Jaibir much after the incident, when, naturally, the common intention had ceased to exist. On this ground alone it would not be admissible. We would like to refer to the judgment of this Court in ***Mohd. Khalid v. State of West Bengal***² wherein this Court held:

“33. In view of what we have said about the confessional statement it is not necessary to go into the question as to whether the statement recorded under Section 164 of the Code has to be

² (2002) 7 SCC 334

given credence even if the confessional statement has not been recorded under Section 15 of the TADA Act. However, we find substance in the stand of learned counsel for the accused-appellants that Section 10 of the Evidence Act which is an exception to the general rule while permitting the statement made by one conspirator to be admissible as against other conspirator restricts it to the statements made during the period when the agency subsisted. In *State of Gujarat v. Mohd. Atik* [(198) 4 SCC 351] it was held that the principle is no longer res integra that any statement made by an accused after his arrest, whether as a confession or otherwise, cannot fall within the ambit of Section 10 of the Evidence Act. Once the common intention ceased to exist, any statement made by a former conspirator thereafter cannot be regarded as one made in reference to their common intention. In other words, the post-arrest statement made to a police officer, whether it is a confession or otherwise touching his involvement in the conspiracy, would not fall within the ambit of Section 10 of the Evidence Act.”

- 25) Likewise, in ***Firozuddin Basheeruddin & Ors. v. State of Kerala***³, this Court discussed the law of conspiracy exhaustively and following passages therefrom would be sufficient to elucidate the legal position enshrined in Sections 120-A and 120-B of the IPC:

“25. Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes 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 reasonably 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

³ (2001) 7 SCC 596

criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the 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 offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. Explaining this rule, Judge Hand said:

“Such declarations are admitted upon no doctrine of the law of evidence, but of the substantive law of crime. When men enter into an agreement for an unlawful end, they become ad hoc agents for one another, and have made 'a partnership in crime'. What one does pursuant to their common purpose, all do, and as declarations may be such acts, they are competent against all. (*Van Riper v. United States*, 13 F 2d 961, 967 (2d Cir 1926)).”

27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.”

- 26) The Court also noted the earlier judgment in the case of **State v. Nalini**⁴ wherein the principles governing the law of conspiracy had been summarized. Those principles are reproduced in para 32 of the judgment. For our purposes, principle No.2 is reproduced as

⁴ (1999) 5 SCC 253

under:

“2. Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.”

Thus, the alleged disclosure/confessional statement (Mark A) made by Jaibir in another case would be of no consequence.

27) With this, we now discuss the evidentiary value of the recovery of scooter.

28) Sub-Inspector Ram Chander, who was the Investigating Officer and who appeared as PW-17, deposed in his statement that on July 13, 2001, the scooter in question, which was allegedly used in the offence, was recovered from the house of Indra Dalal. It was parked in verandah and the same was taken into possession vide recovery memo Exhibit PD. It is important to note that on July 13, 2001, appellant Indra Dalal was in jail, as she was arrested on June 02, 2001, when the so-called recovery was made. Recovery was, thus, made in her absence. Harish Chander Godara, brother of the deceased, appeared as PW-2. According to him, he was at the roof of the house at the time when a boy came and shot at his brother. He rushed from

upstairs to the ground floor and saw the boy leaving on scooter towards the town. He noted down the number of the scooter which was HR 20G 1102 and was of cream colour. He further stated that on July 13, 2001, on seeing the police vehicle near bus stand, he went to the Police to enquire about the case. During that time, one informant informed the police that one scooter bearing No. HR 20G 1102 was standing in the store of the old house of Indra Dalal. It would be of interest to point out that the Investigating Officer (PW-17) had earlier gone to the house of Indra Dalal immediately after the incident, but did not find any scooter. If the registration number of the scooter was given by PW-2 during investigation and the Investigating Officer had visited the house of Indra Dalal, how he could not find the scooter parked there with the same number on that date. All these facts cast a shadow of doubt on the alleged recovery of scooter from the house of appellant Indra Dalal.

- 29) Appellant Jaibir has denied that the scooter in question belonged to him. In order to prove his ownership, the prosecution had produced Gulab Singh (PW-18), Registration Clerk with Regional Transport Office. He produced on record application (Exhibit PZ) moved by the police officer and report (Exhibit PZ/1) made by

Pavan Kumar, Clerk working in the Regional Transport Office. No documents have been produced to show the ownership of Jaibir. Only the report prepared by Pavan Kumar, Clerk, allegedly on the basis of the record, is produced. That cannot partake the character of primary evidence. Moreover, in the cross-examination of PW-18, he has accepted that there is cutting in the relevant entry of ownership. He also admitted that he had not brought the forms/applications for change of ownership of the scooter in question. He further mentioned that as per the record, the original registration of the scooter was in the name of one Vipul Kaushal, s/o. Prithi Singh, resident of Hisar. In such a circumstance, necessary evidence was required to prove how the ownership changed hands and came to be recorded in the name of Jaibir. No such evidence has been produced. We are, therefore, of the opinion that there is no sufficient evidence to prove the ownership of the scooter in the name of Jaibir.

- 30) Aforesaid discussion leads us to conclude that the entire bucket of evidence is either inadmissible putting the roadblock creating by the Evidence Act or unbelievable/untrustworthy. For all the aforesaid reasons, we are of the view that the prosecution has miserably failed to prove, beyond reasonable doubt, the charge of

conspiracy against these appellants with the aid of Section 120-B of IPC. As a result, the appeals are allowed and the impugned judgment and sentence are, accordingly, set aside. During the pendency of these appeals, sentence of the appellant Indra Dalal had been suspended. Her bail bonds shall, accordingly, stand discharged. The other two appellants, namely, Bijender @ Vijay and Jaibir, shall be released from jail forthwith, unless they are required in any other case.

.....J.
(A.K. SIKRI)

.....J.
(UDAY UMESH LALIT)

**NEW DELHI;
MAY 29, 2015.**

JUDGMENT