

CASE NO.:

Appeal (crl.) 784 of 1994

Appeal (crl.) 785 of 1994

PETITIONER:

STATE OF KERALA

Vs.

RESPONDENT:

P. SUGATHAN & ANR.

DATE OF JUDGMENT: 26/09/2000

BENCH:

D.P. Mohapatra & R.P. Sethi.

JUDGMENT:

SETHI, J.

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Jealousy, on account of love affair of two men with one woman, ultimately resulted in the death of one and upon conviction, sentence to life imprisonment of the other in the case out of which the present appeal has arisen. The common beloved was Krishna Kumari, respondent No.2 (hereinafter referred to as "A2") and one of her paramours was Soman deceased whose decapitated head and headless body were recovered from a river in Kerala. After completing his post-graduation the deceased Soman was in the employment of Canara Bank posted at Tirurangadi Branch. The other paramour of the woman is P. Sugathan (hereinafter referred to as "A1") who, on the date of occurrence, was Sub-Inspector of Police posted at Police Station, Ramankiri. Upon trial A1 and A2 were convicted for the offences punishable under various sections of the Indian Penal Code including Section 302, and sentenced to imprisonments, the maximum of which was the life imprisonment. The Accused No.3 tried with them was convicted and sentenced for the offences under Section 201 read with Section 34 of the IPC. The conviction and sentence of A1 was upheld but the conviction of the lady accused A2 under Section 302 IPC was set aside. She was, however, convicted and sentenced under Section 201 of the IPC. Feeling aggrieved, the State has filed appeal No.784 of 1994 for setting aside the judgment of the High Court and on proof of the existence of alleged conspiracy, to convict and sentence to A2 as well. Against his conviction and sentence under Section 302 and other offences under the Indian Penal Code, the A1 has filed Criminal Appeal No.785 of 1993 with prayer of acquitting him of the charges. Both the appeals have been heard together and are being disposed of by this common judgment. The facts of the case are that deceased Soman had his college education in the University College at Trivandrum (Kerala) where initially he stayed with his elder sister who was employed in the office of the Accountant General. After about one and a half years he shifted to the college hostel but continued visiting occasionally the house of his sister

PW4. Krishna Kumari A2 was, at that time, the domestic servant of his sister. The acquaintance between Soman and Krishan Kumari developed into love affair between the two. After his post graduation he got a job in the Canara Bank and was posted at Thirurangadi but his love affection with Krishan Kumari A2 continued. He was married somewhere in the year 1981-82 which resulted in the breaking of his relations with A2. Thereafter A2 developed illicit relations with A1 and started residing with him as his concubine. In 1987 A1 was posted as Sub-Inspector of Police at Ramankiri Police Station. Despite his having a wife living and three children, A1 started living with A2 as her husband in a rented house at Kalarcode. His legally wedded wife and three children were, at that time, residing at Alleppey in another house. Even though A1 and A2 had taken a house on rent in Kalarcode, they normally used to stay in the official quarters attached to Ramankiri Police Station. Out of their illicit relationship they had got a son. In early 1987 deceased Soman accidentally came across with A2 and is alleged to have revived his old intimacy and love affair. Coming to know about the intimacy of his concubine, Krishna Kumari and acquiring knowledge that Soman was making attempts to re-establish his old relationship with Krishna Kumari, A1 made up his mind to put an end to the intimacy by causing his death. It was alleged by the prosecution that A1 and A2 hatched a conspiracy to commit the murder of Soman and in pursuance of the said conspiracy A2 met Soman at the Haripad bus stand on the morning of 18th July, 1987 and took him to the house taken on lease at Kalarcode. On 19th July, 1987 A2 allegedly using deceitful means is stated to have taken Soman to the official quarters of A1 and sometime after 10.30 p.m. they caused his death by suffocating him. At this stage one Prasannan, who later became the approver and Mohanan accused No.3 are stated to have joined the conspiracy, earlier hatched by A1 and A2. The dead body of Soman was removed by A1 and A2 with the help of Prasannan, the driver of the boat. They carried the dead body from the Police quarters to the boat and thereafter the approver, as per the directions of the A1, drove the boat in the Pamba River to some distance. When the boat reached quite at a distance in the river, A1 cut off the head from the body of the deceased with a knife supplied by the approver. The head was thrown in the river. The boat again proceeded further. A1 caused many penetrating injuries on the abdomen of the headless body and pushed it also into the waters of Pamba River, apparently with the object to destroy the evidence. As after 18th July, 1987 Soman did not return to his house, his father started inquiring about his whereabouts. Soman's mother, wife, sister and in-laws who were at Thiruvananthapuram were contacted over the telephone to convey the news of his missing and also to ascertain as to whether by any chance, he had reached there. Finding no clue of the missing Soman, all his relations reached to his family house and intensified his search. On 20th July, 1987 an FIR in a man-missing case Crime No.254/87 was registered at Kayamkulam Police Station. On 22nd July, 1987 PW2 Mathew found a headless body floating in the Pamba River. He contacted the Police at Pulimcunnu Police Station, where on the basis of his statement Crime No.75/87 was registered. PW56 who was investigating Crime No.75/87 conducted a search of A1's official quarters at Ramankiri on 25th July, 1987 and prepared Exhibit P-29, a search list. He deputed two police constables to guard the quarters. The investigation of Crime No.75/87 and Crime No.254/87 were clubbed together by the orders of the Dy.Superintendent of Police. DIG,

Crime Investigation directed the Dy. Superintendent of Police, Crime Branch to take up the investigations of the case who after taking over, verified the investigation conducted by the former investigating officers and searched the houses of PW1, PW8. Accused No.3 surrendered on 1.8.1987 before the investigating officer. A1 and A2 were also arrested on that day. Various articles were seized and super-imposition test on the dead body was conducted. On 21st August, 1987 Prasannan who was arraigned as Accused No.4 expressed his willingness to make a confessional statement which was recorded by the Judicial Magistrate on 27th August, 1987 after giving him necessary statutory warning. Thereafter an application was filed before the Chief Judicial Magistrate, Alappuzha submitting that Prasannan was willing to give a full and true disclosure of the whole circumstances within his knowledge regarding the commission of the crime and he may be made an approver. After perusing his confessional statement, the Chief Judicial Magistrate summoned Prasannan PW1 and recorded his statement. He was tendered pardon under Section 306 of the Code of Criminal Procedure. The Judicial Magistrate, First Class, Ramankiri committed the accused to the Court of Sessions. The order of committal was challenged by the accused persons on the ground that PW1, who accepted the pardon had not been examined under Section 306(4) of the Code of Criminal Procedure before commitment of the case to the Court of Sessions. The High Court vide order passed in Cr.M.P. 327/87 quashed the committal order and directed the Magistrate to proceed afresh in accordance with law and comply with the provisions of Section 306(4)&(5) of the Code of Criminal Procedure. The accused persons were granted an opportunity to cross-examine the approver at the time of recording of his statement under Section 306. The statement of the approver was recorded as per the directions of the High Court and all the three accused again committed to the court of Sessions to stand trial for various offences under the Indian Penal Code. The prosecution examined 63 persons as witnesses in the case and the accused produced 6 witnesses in their defence. As noted earlier, the Trial Court convicted A1 and A2 and sentenced them to undergo rigorous imprisonment for three years under Section 193, 5 years rigorous imprisonment under Section 201, 6 months under Section 342 and imprisonment for life under Section 302 read with Section 120B of the IPC. All the sentences were to run concurrently. Accused No.3 was sentenced to undergo rigorous imprisonment for one year under Section 201 read with Section 34 IPC. The High Court relied upon the testimony of the approver but found on facts that the prosecution has failed to prove the conspiracy between A1 and A2 before the murder of Soman and acquitted her for offences under Section 302 and 120B, IPC. However, she was found to be guilty of the offence punishable under Section 201 IPC and sentenced to the period of imprisonment she had already undergone by that time which was treated as sufficient in the circumstances of the case. Dr. Jose Varghese, learned Advocate appearing for the appellant-State urged that the High Court committed a mistake of law in holding that the criminal conspiracy between A1 and A2 for murdering deceased Soman has not been proved. According to him there was sufficient evidence in the form of various circumstances brought on record to prove the existence of conspiracy. The conduct of A2, the factum of her posting some letters got written from the deceased before his murder, inducement by her to the deceased to come at the residence of A2 and her active participation in destroying

the dead body are stated to be sufficient circumstances which would lead to irresistible conclusion of the existence of conspiracy. Criminal conspiracy is defined under Section 120(A) of the Indian Penal Code as under: "Definition of@@

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criminal conspiracy. When two or more persons agreed 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 offence 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." Section 120B prescribes the punishment for criminal conspiracy which by itself is an independent offence, punishable separately from the main offence. The offence of criminal conspiracy can be established by direct evidence or by circumstantial evidence. Section 10 of the Evidence Act introduces the doctrine of agency and will be attracted 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 ground, that is say, there should be a prima facie evidence that the person was a party to the conspiracy before his acts can be used against the co-conspirators. This Court in Bhagwan Swarup Lal Bishan Lal vs. State of Maharashtra [AIR 1965 SC 682] held that the expression "in reference to their common intention" in Section 10 - 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. Anything said, done or written is 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 was further held: In short, the section can be analysed as follows: (1) There shall be a prima facie evidence affording a reasonable ground for a Court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences

are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in V.C. Shukla v. State [1980(2) SCC 665] held that to prove criminal conspiracy there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.

In Kehar Singh vs. State [AIR 1988 SC 1883] it was noticed that Section 120A and Section 120B IPC have brought the Law of Conspiracy in India in line with English Law by making an overt act inessential when the conspiracy is to commit any punishable offence. The most important ingredient of the offence being the agreement between two or more persons to do an illegal act. In case where criminal conspiracy is alleged, the court must enquire whether the two persons are independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not to be proved. The evidence as to the transmission of thoughts sharing the unlawful act is not sufficient. A conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120B of the Indian Penal Code.

After referring to some judgments of the United States Supreme Court and of this Court in Yash Pal Mittal v. State of Punjab [1977 (4) SCC 540]; Ajay Aggarwal vs. Union of India [AIR 1993 SCW 1866], the Court in State of Maharashtra v. Som Nath Thapa [AIR 1996 SC 1744] summarised the position of law and the requirements to establish the charge of conspiracy, as under:

"The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods of services

in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do so, so long as it is known that the collaborator would put the goods or service to an unlawful use."

In the backdrop of the legal position relating to the offence of criminal conspiracy, it has to be seen as to whether the prosecution proved beyond doubt that A2 had agreed with A1 to cause the death of deceased Soman in the manner alleged in the charge-sheet. The circumstances relied upon by the prosecution to prove the existence of conspiracy were enumerated by the Trial Court as under:

"(1) The accused 1 and 2 had a revengeful motive to murder.

(2) Soman was last seen in the company of accused 1 and 2.

(3) The dead body of the deceased was removed from the quarters of the first accused to the M.L. Pattam boat on the night of 20.7.1987 and the body was dismembered and thrown into the rivers.

(4) The hairs collected from the quarters and the boat were found to be similar with the scalp hairs collected at the time of post-mortem examination, on scientific examination.

(5) The deceased was made to write two inland letters postdating them so as to make it appear that Soman was alive on the date of those letters.

(6) Recovery of M03 on the basis of the information furnished by the first accused".

To prove the first circumstance, the prosecution relied upon the testimony of PWs 4, 15, 16, and 49. PW4 is the elder sister of the deceased, PW15 is a clerk in the New Bank of India, PW16 is a clerk in the Pathiyoor Branch of Canara Bank and PW49 is the Circle Inspector of Kayamkulam who was a classmate of the deceased Soman. From their statements it could be gathered that Soman was having intimacy with A2 for some time in his student days and their relationship broke down after his marriage. Some months prior to the incident, he came across A2 and made attempts to revive the old intimacy. Such an evidence would not, in any way, prove that A1 was aware of the revival of the intimacy between erstwhile lovers. No motive for the commission of the offence of murder could, therefore, be inferred from the existence of such a circumstance which is in no way directly related to be the occasion of death. The mere fact that Soman had told PW49 that Krishna Kumari A2 had invited him to her house on 18th July, 1987 cannot be so

stretched to hold that such invitation was in furtherance of the alleged conspiracy hatched between A1 and A2. There is no evidence worth any value to show or suggest that A2 was averse to the revival of intimacy with the deceased or that she had shared the secret of her love affair and its revival by the deceased, with A1 with whom she was living as his wife, though without marriage. The Trial Court was, therefore, not justified in holding that the prosecution had proved that A1 was aware of the revival of intimacy with the deceased and A2. Even if he had known about the intimacy there was no cause or occasion for A2 to agree with him to commit the crime of murder. The termination of earlier relationship between A2 and the deceased could also not be a cause for her to share a common intention of committing the crime particularly when she was happily living with A1 and out of illicit relationship they had, a son was born who was living at the time of the occurrence. The circumstances that Soman was seen in the company of A1 and A2 would only prove the death of the deceased when he was with the aforesaid two accused persons but that by itself was not sufficient to hold that A1 and A2 had agreed to kill him before he came at their residence on 19th July, 1987. There was commotion in the quarters of A1 on the night of 19th July, 1987 is a fact established along with the fact that there were screaming of some woman at that very time. The screaming of the woman not only suggest the presence of A2 but her reluctance to share the common intention to kill the deceased or on seeing him being killed, to be horrified. Similarly, statements of PWS12, 13 and 17 can be taken to have proved the presence of Soman at the Haripad bus stand on 18th morning, but not sufficient to hold that A2 was a conspirator with A1. The factum of the deceased having been made to write two post-dated inland letters has not been proved on facts. The Trial Court itself noticed, "no doubt, there is no material on record to show that Exhibit D-2 was a letter written under compulsion". Exhibit D-2 and D-11 were not proved in the Trial Court. Exhibit D-2 is not written on an inland letter. Such a weak circumstance, much less proved on facts, could not be held to be sufficient to infer the agreement between A1 and A2 to commit the murder of deceased Soman. The alleged circumstances relied to show the existence of conspiracy are such circumstances, which even when believed, cannot be held to have proved, beyond reasonable doubt, involvement of A2 in the commission of the crime of murder. The High Court, while giving A2 the benefit of doubt rightly held as under:

"Now we will proceed to consider whether there was any conspiracy between accused 1 and 2 for causing death of Soman. The mere fact that Soman was persuaded to go to the quarters is not sufficient to show that 2nd accused had any intention to finish her paramour off. PW49 (Circle Inspector of Police) was a friend of Soman. He deposed that Soman had told him once that 1st accused is in possession of the letters and photos sent by Soman and that Krishnakumari would get them from 1st accused and the Krishnakumari had invited Soman to visit her on 18.7.1987. This night, at the most, show that Krishnakumari would have really intended to revive her old connection with Soman. Learned Additional Public Prosecutor contended that as 2nd accused had ventured subsequent to the death of Soman, to post the letters written by Soman, the conduct is reflective of a plot hatched by her and 1st accused together. The said conduct need not necessarily be reflective of that. In the same manner as 1st accused drafted PW1 and 3rd accused he would

have secured the services of 2nd accused subsequent to the murder.

One circumstance in the above context is relevant as it has a tendency to absolve 2nd accused from the charge of criminal conspiracy. When some of the neighbours heard a commotion on the night of 19.7.1987, they rushed to the police quarters. PW23 said that it was a female sound and the word overheard indicated that the female was crying aloud. It is indicative of 2nd accused witnessing some act which 1st accused would have perpetrated on the deceased and on seeing it she would have cried aloud. Then again PW1 said that while he was taking 2nd accused to Changanacherry her countenance had a grieving look.

We are inclined to think, from the aforesaid circumstances, that she was only a victim of intimidation and coercion in doing what 1st accused would have commanded her to do. We are, therefore, giving her benefit of doubt in regard to the charge of criminal conspiracy."

After perusing the whole record, scanning the evidence of the prosecution witnesses and hearing lengthy arguments from both sides, we are satisfied that the High Court was right in holding that charge of criminal conspiracy against A2 had not been proved beyond doubt. She was, therefore, rightly acquitted of the charge under Section 302 read with Section 120B of the IPC. However, as she was found to have actively participated in causing disappearance of the dead body of the deceased knowing and having reason to believe that his murder has been committed by A1, was convicted and sentenced under Section 201 of the IPC.

Shri C.N. Sree Kumar, learned Advocate appearing for A1 in Criminal Appeal No.785 of 1994 submitted that conviction and sentence of appellant being essentially based upon the testimony of PW1 was not legal and valid. According to him PW1 was not a reliable witness and that there were major discrepancies in his deposition. We are not impressed with this argument. Prasanna PW1 has been proved to have been validly granted the pardon under Section 306 of the Code of Criminal Procedure and the accused-appellant afforded sufficient opportunity of cross-examining him both in the committal as well as in the Sessions Case. He has withstood the cross-examination and proved the factum of the death of the deceased by A1 and the destruction of his body by all the accused-persons. An accomplice is a competent witness and a conviction can be based upon his testimony if it is otherwise corroborated in material particulars. Both the Trial Court as well as the High Court have found on facts that the death of Soman was a case of homicide for which A1 was responsible. PW1 was the driver of a boat in which personnel of Ramankiri Police used to undertake their journey. On the date of occurrence a young man accompanying A2 came to the room of A1. Despite there being defects in the boat, the witness was asked by A1 to arrive at 12o Clock in the night on the west side of NSS School and threatened that if he did not come A1 will finish him. He was inquired as to whether there was a knife in the boat to which he replied in the affirmative. A1 told the witness to sharpen the knife. At about 12o Clock in the night he took the boat to the place earlier notified by A1. Accused No.3 was accompanying him. Accused No.3 slept in the boat and the witness went to inform A1 who was sitting on the side wall of his quarter, along with A2. The young man whom the

witness had seen a day earlier was lying dead there with one armless baniyan and underwear. A1 told the witness to carry dead body. The witness, A1 and A2 together carried the dead body to the half wall. The witness was told by A1 to go to the boat and bring Mohanan Accused No.3. The witness and A1 kept the dead body inside the fence. The witness, Accused No.3 along with A1 kept the dead body on the platform and kept it upside. The dead body was kept in the boat and the witness asked to start it. After reaching one kilometer distance A1 told the PW1 to stop the boat. A1 got the knife from PW1. He held the head by hairs of the deceased and started cutting his throat neck by his knife. After chopping off the head A1 threw it in the river. Thereafter he started cutting the stomach of the dead body and pushed away it into the river. The knife was also thrown into the river. In this process A1 was also injured and he got his leg injury dressed next day in Lurd Hospital. After being told by some people that a headless human body was seen floating in the river, PW1 went to the quarters of A1 to enquire about it. He was told not to worry and not to tell anybody whatever had happened. The whole of the deposition of PW1 is the vivid explanation of the manner in which the offence was committed by A1 in the presence of A2 and A3. There is no reason to disbelieve the statement of PW1. Besides his ocular testimony there is sufficient corroborative evidence which connects A1 with the commission of the crime of murder of the deceased Soman. Learned counsel appearing for A1 could not refer to any alleged weak link to the circumstances relied upon by the courts below to show that the testimony of PW1, an approver, had not been corroborated. The High Court was, therefore, right in observing:

"While considering PW1's evidence, one broad aspect has to be borne in mind. In a waterlogged area like Ramankari transportation is possible only by boat or canoe. If a crime was committed by a Sub Inspector, the most likely means of conveyance which he might hackney is a boat. If there was any boat attached to the Police Station available, its crew would be the likeliest persons on whom the culprit may resort for help for disposing of the dead body. There is no dispute that "M.L. Pattom" boat was so attached to Ramankari Police Station. PW.38 is the owner of the boat and he said PW1 was the driver of the boat. So, there is very strong possibility that PW1's boat would have been utilised for disposing of the body if 1st accused was the culprit."

We are not satisfied with the submission of the learned counsel for the appellant that the conviction of his client is solely based upon the testimony of witness PW1 and his deposition is not corroborated in material particulars. The circumstantial evidence produced in the case is sufficient to connect the accused with the commission of the crime. It does not lead to any other inference than the one of his involvement in the crime. We do not feel any reason to disagree with the findings of the Trial Court as well as the High Court in so far as involvement of A1 in the commission of crime of murder is concerned.

There are no merits in both the appeals which are accordingly dismissed.

JUDIS