

CASE NO.:
Appeal (crl.) 744 of 2008

PETITIONER:
YOGESH @ SACHIN JAGDISH JOSHI

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT: 28/04/2008

BENCH:
S. B. SINHA & D.K. JAIN

JUDGMENT:
J U D G M E N T
REPORTABLE

CRIMINAL APPEAL NO. 744 OF 2008
Arising Out of S.L.P. (Criminal) No.5514 of 2007
WITH
CRIMINAL APPEAL NO. 745 OF 2008
[Arising out of S.L.P. (Criminal) No.5515 of 2007]

D.K. JAIN, J.:

Leave granted.

2. These two appeals are directed against orders dated 23rd June, 2006 and 19th September, 2006 passed by the High Court of Judicature at Bombay in Criminal Revision Application No. 288 of 2005 and in Criminal Writ Petition No.1884 of 2006 respectively. By the first order, the High Court has repelled the challenge made to order dated 23rd March, 2005, in Criminal Appeal No.83 of 2004, whereby the Sessions Judge, Satara had affirmed the order passed by the Juvenile Justice Board, rejecting the application filed by the appellant under Section 227 of the Code of Criminal Procedure, 1973 (for short "the Code") for discharge. By the latter order, another Single Judge of the High Court has dismissed the writ petition preferred by the appellant, seeking quashing of order dated 23rd March, 2005.

3. The facts giving rise to the present appeals lie in a narrow compass and centre around a criminal conspiracy, allegedly hatched by the family members of the appellant to murder the deceased, Kunal. The case of the prosecution as per the charge-sheet is that in the month of March 1999, deceased Kunal organised an entertainment show, sponsored by the father of the appellant. During the event, the deceased was introduced to the sister of the appellant, Hema. The acquaintance blossomed into love between the two. Fearing that there may be opposition to their close relationship from their family members, they eloped and got married on 29th May, 2000. Appellant's father lodged a complaint alleging that the deceased had kidnapped his daughter. The complainant, namely, the father of the deceased, also reported the matter to the Pune Police.

4. Sometime in June, 2000, Kunal contacted his father and informed him that he was at Gauhati with Hema. Thereupon, the complainant and his wife brought Kunal and Hema to Mumbai. On persuasion by the complainant and his wife, Hema agreed to return and stay with her parents and the marriage between Kunal and Hema is stated to have been

annulled. In December, the complainant filed complaints with the S.P., Satara and the Additional Commissioner of Police, Pune against the father of the appellant alleging that he had abused him over the telephone. The complainant also alleged that even thereafter, threatening calls were made by the appellant, his sister, Hema and father. However, the things seem to have settled down with the intervention of the Advocate of the complainant.

5. Thereafter, Kunal was engaged to another girl and the wedding was scheduled for 30th November, 2001. On 21st April, 2001, the deceased (Kunal) left Panchgani (where he was living with the parents) for Mahabaleshwar in his maruti car. At about 8:30 p.m., a taxi-driver informed the complainant that Kunal was lying in a pool of blood on Mahabaleshwar road. The complainant rushed to the spot and took his son in an injured condition to the hospital where he was declared brought dead. The complainant lodged an F.I.R at Mahabaleshwar Police Station against unknown persons and an offence was registered under Section 302 of the IPC. However, on the next day, the complainant levelled allegation that since marriage of Kunal had been fixed with another girl, the appellant and his family members had developed a grudge and had, therefore, hatched a conspiracy with co-accused Umesh, Suresh, Bhavarlal Sharma, Captain Sharma to murder Kunal.

6. On completion of investigation, charge-sheet was filed against the appellant before the Juvenile Court, Satara, being below 18 years of age, and against fifteen other persons, which included his father (A-1), mother (A-2), sister (A-4), a family friend (A-11), manager of his father (A-12), in Sessions Court, Satara. All of them have been arraigned as members to the conspiracy to murder Kunal. The appellant, herein, and accused A-1, A-2, A-4 to A-7, A-11 and A-12 have been prosecuted for offences under Section 302 and 120B of the Indian Penal Code, 1860 (for short "the I.P.C."), whereas accused A-7 to A-10 and A-13 to A-16 have been prosecuted for offences under Section 302 read with Section 120B and under the Arms Act.

7. The appellant filed an application for discharge before the Juvenile Justice Board, under Section 227 of the Code. The Juvenile Justice Board by order dated 1st October, 2004, rejected the said application. Being aggrieved by the said order, the appellant preferred a criminal appeal before the Sessions Judge, Satara. As noted above, the said appeal was dismissed vide order dated 23rd March, 2005. Still aggrieved, the appellant moved a revision application before the High Court. Vide order dated 23rd June, 2006, the High Court dismissed the criminal revision.

8. It appears that the mother (A-2), sister (A-4), a family friend (A-11) and the manager of appellant's father (A-12) had also moved applications under Section 227 of the Code before the Sessions Judge, Satara for discharge, which were dismissed by virtue of orders dated 16th January, 2006 and 7th October, 2003. Both these orders were challenged by them by means of two Criminal Writ Petitions (Nos.1283 and 1284 of 2006). Both the petitions were allowed by the then Chief Justice of the High Court vide a common order dated 7th July, 2006. Inter-alia, observing that the circumstances highlighted by the prosecution, even if accepted in entirety, only created a suspicion of motive, these were not sufficient to make out a case for conviction of the accused and some suspicion or motive cannot serve as a sufficient ground for framing of charge against them. Accordingly, all the four accused/petitioners were discharged.

9. Emboldened by the said order, on 4th August, 2006, the

appellant filed a Criminal Writ Petition (No.1884 of 2006) under Article 227 of the Constitution read with Section 482 of the Code for quashing of aforementioned order dated 23rd March, 2005, passed by the Sessions Judge, Satara and for discharge of the charges framed under Section 302 read with Section 120B of the I.P.C. Expressing surprise over the fact that this petition had been filed though the order impugned in the petition stood confirmed on dismissal of criminal revision on 23rd June, 2006, the learned Judge rejected the plea of the appellant that in the light of order dated 7th July, 2006, in the case of co-accused, by reason of parity, he was also entitled to be discharged. Inter-alia, observing that earlier order dated 23rd June, 2006 in the case of the appellant, which was certainly relevant for deciding the Criminal Writ Petitions No.1283 & 1284 of 2006, had not been noticed in order dated 7th July, 2006 (by the Chief Justice), vide order dated 19th September, 2006, the learned Judge dismissed the petition. As noted above, both the orders, dated 23rd June, 2006 and 19th September, 2006 are challenged in these two appeals.

10. At this juncture, two other significant subsequent developments deserve to be noted. In the first place, a Special Leave Petition, preferred by the State against order of the High Court dated 7th July, 2006, discharging accused Nos.2, 4, 11 & 12, was dismissed on 30th April, 2007. Secondly, relying on order dated 7th July, 2006, the father (A-1) of the appellant, termed as the main accused in the charge-sheet, filed an application before the Sessions Judge for discharge from all the charges. Taking note of the said order passed by the High Court, and inter-alia, observing that apart from the fact that the alleged threats are vague and are inadequate to connect the said accused with the crime, vide order dated 14th May, 2007, the Sessions Judge came to the conclusion that there was absolutely no material on the basis whereof a reasonable likelihood of the said accused being convicted could be predicted. Accordingly, he has discharged the said accused. Thus, as on date, the father (A-1), the mother (A-2), the sister (A-4) of the appellant and his two other associates (A-11 & A-12) stand discharged of the offences for which they were charged, namely, Sections 302 and 120B of I.P.C.

11. Mr. Ravi Shanker Prasad, learned senior counsel appearing for the appellant, submitted that in the charge-sheet there is no overt act attributed to the appellant regarding actual murder and the threats allegedly given by his family members and friends to the family of the deceased are not sufficient to infer a criminal conspiracy, particularly when, the disputes between the two families had already been compromised much prior to the incident. Learned counsel submitted that accepting the prosecution case as it is, there is absolutely no material on record to frame a charge against the appellant for offences under Sections 302 and Section 120B of the I.P.C. It was also urged that other members of the family, namely, the mother and sister of the appellant along with two other accused having been discharged by the High Court and similarly the father of the appellant having been discharged by the Sessions Judge, there was no sufficient ground to proceed against the appellant for the said offences. In support of the proposition that a mere suspicion is not sufficient to hold that there is sufficient ground to proceed against the accused, learned counsel placed reliance on the decision of this Court in Union of India Vs. Prafulla Kumar Samal & Anr.

12. Mr. Ravindra Keshavrao Adsure, learned counsel appearing for the State, on the other hand, submitted that there is ample material on record to show a strong motive for commission of crime, namely, Kunal's proposal to get married to another girl after an affair with Hema (A-4), which was

obviously, not liked by the appellant and his family members. It was thus, pleaded that the High Court was justified in dismissing appellant's petitions for discharge.

13. Before advertng to the rival submissions, we may briefly notice the scope and ambit of powers of the Trial Judge under Section 227 of the Code.

14. Chapter XVIII of the Code lays down the procedure for trial before the Court of Sessions, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the Court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

15. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See: State of Bihar Vs. Ramesh Singh and Prafulla Kumar Samal (supra)]

16. In the light of the aforementioned principles, we may now consider whether or not in the present case the High Court was justified in declining to discharge the appellant. However, before advertng to the circumstances, relied upon by the prosecution in support of its primary charge that a conspiracy had been hatched to eliminate Kunal, the essential features of the offence of conspiracy need to be noticed

17. Section 120A of I.P.C. defines criminal conspiracy. The section reads as under:

"120A. Definition of criminal conspiracy.\027When two or more persons agree to do, or cause to be done,\027
(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.\027It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120B of I.P.C. provides for punishment for an offence of criminal conspiracy.

18. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi & Ors. Vs. State of Maharashtra, a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

19. In Mohammad Usman Mohammad Hussain Maniyar & Ors. Vs. State of Maharashtra, it was observed that for an offence under Section 120B, the prosecution need not necessarily prove that the perpetrators expressly agree to do and/or cause to be done the illegal act, the agreement may be proved by necessary implication.

20. In Kehar Singh & Ors. Vs. State (Delhi Administration), the gist of the offence of the conspiracy has been brought out succinctly in the following words:

"The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough."

21. Again in State of Maharashtra & Ors. Vs. Som Nath Thapa & Ors., a three-Judge Bench of this Court held 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 or 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.

22. More recently, in State (NCT of Delhi) Vs. Navjot Sandhu @ Afsan Guru, making exhaustive reference to several decisions on the point, including in State Through Superintendent of Police, CBI/SIT Vs. Nalini & Ors., Venkatarama Reddi, J. observed thus:

"Mostly, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. Usually both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused (per Wadhwa, J. in Nalini's case at page 516). The well known rule governing circumstantial evidence is that each and every incriminating circumstance must be clearly established by reliable evidence and "the circumstances proved must form a chain of events from which the only

irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible." (Tanviben Pankajkumar case , SCC page 185, para 45). G.N. Ray, J. in Tanibeert Pankajkumar observed that this Court should not allow the suspicion to take the place of legal proof."

23. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

24. Bearing in mind the essential features of the offence of criminal conspiracy, enumerated above, we may advert to the facts of the instant case. The relevant portion of the charge-sheet filed against all the accused reads as follows:

"\005Though son of the complainant Kunal Parihar got married with accused No.4 Hema Joshi, his family again arranged for another marriage with one Meenal of Baroda on 24.2.2001. Engagement ceremony took place and date of marriage was fixed as 30.11.2001. this fact came to the knowledge of the accused No.1,2,3,4 & 5 and 11 & 12. Therefore, in order to teach a lesson to the complainant they hatch conspiracy to kill his only son, Kunal. Accordingly accused No.1 contacted accused No.6 Suresh Jhajara and further informed him the complainant and his son should be taught a lesson as Kunal Parihar betrayed him. Hence should be taught a lesson and further asked to carry out future plan.

Accused No.6, contacted accused No.7 and included him in the aforesaid conspiracy. Accused No.1 to 4, contacted accused No.16, through accused No.6 and 7, accused No.16 pending is a notorious criminal. Criminal cases are pending against him in the District Court of Pune. In the offence regarding body, accused No.7 contacted him through witnesses Atul Lohar in order to carry out the aforesaid plan. Accused No.1 gave Rs.80,000/- to accused No.7 via accused No.6. Accused No.16, in order to cause hurt to Kunal introduced accused No.8, 9, 10, 13, 14, 15 to accused No.7. Accused No.7 asked accused No.8, 9, 10, 13, 14, 15 to joint the aforesaid conspiracy and in order to carry out the aforesaid conspiracy successfully accused No.7 purchased one Maruti Car No.MH-

14 D-3027 from witness Afzal Khan Ibrahim Khan, resident of Dehu Road and also Motor Cycle No.MH-14-M-5786. By using the aforesaid vehicles accused No.7 to 10 and 13 to 15 have committed ghastly murder of Kunal. In order to carry out the aforesaid conspiracy successfully accused No.7 has used revolver, khukri, sickle, sword and iron bar and supplied it to accused No.8 to 10 and from 13 to 15, by using the aforesaid weapons the aforesaid persons have assaulted Kunal Parihar by which he sustained grave injuries and ultimately died. Hence accused No.1, 2, 3, 4, 5, 6, 7, 11 and 12 have charged been under Sections 302, 120B IPC and accused No.7, 8, 9, 10, 13, 14, 15 and 16 have charged u/s 302 read with 120B IPC and under Arms Act Section 3 and 25." [Emphasis supplied]

25. Thus, according to the prosecution version, when accused, A-1 to A-5, A-11 and A-12 learnt about the marriage of Kunal with some other girl, they hatched a conspiracy to teach a lesson to the father of Kunal, the deceased. In furtherance thereof, accused A-1 contacted one of the assassins to kill Kunal. It is alleged that accused A-1 to A-4 also contacted accused A-16, a notorious criminal. In other words, the gravamen of the accusation by the prosecution is that it is accused A-1 to A-5, A-11 and A-12 who had hatched the conspiracy; acted in concert to give effect to their plan to get Kunal murdered and in pursuance of the aforesaid criminal conspiracy, the other accused facilitated commission of the said crime. It is common ground that the case of the prosecution is based on the circumstantial evidence, namely, threatening calls from the side of the accused to the complainant, his family and the earlier relationship between the deceased and accused No.4. From the material on record, it is manifestly clear that it was the family members of the appellant, one of their employees and a friend who allegedly had all entered into an agreement to eliminate the deceased. However, as noted above, accused A-1, A-2, A-4, A-11 and A-12 already stand discharged from the charges framed against them under Sections 120B and 302 I.P.C vide orders dated 7th July, 2006 and 14th May, 2007, passed by the High Court and the Sessions Judge respectively. While discharging the said accused, both the courts have come to the conclusion that there is no material on record to show that they had hatched a conspiracy to commit murder of Kunal. Thus, the stand of the prosecution to the effect that the parents, sister and friends of the appellants had entered into a criminal conspiracy stands rejected by virtue of the said orders of discharge. Furthermore, in its order dated 7th July, 2006, the High Court has opined that the circumstances, relied upon by the prosecution, even if accepted in its entirety, only create a suspicion of motive, which is not sufficient to bring home an offence of murder. As noted above, State's petition for special leave against the said judgment has already been dismissed.

26. We are, therefore, of the view that in the light of the subsequent events, namely, the orders of the High Court dated 7th July, 2006 in Criminal Writ Petitions No. 1283 & 1284 of 2006, discharging appellant's mother, sister and two close associates, accused Nos.2, 4, 11 and 12 respectively; order dated 30th April, 2007 passed by this Court dismissing the

Special Leave Petition preferred by the State against order dated 7th July, 2006 and order dated 14th May, 2007 passed by the Sessions Judge, Satara, discharging the father (A-1) of the appellant, stated to be the mastermind behind the entire conspiracy, for offences under Sections 120B and 302 I.P.C., on same set of circumstances and accusations, no sufficient ground survives to proceed against the appellant for the aforementioned offences.

27. For the reasons aforesaid, we are constrained to allow the appeals. Consequently, the impugned orders are set aside and the appellant is discharged from the charges levelled against him in the charge-sheet.

