Mohan Singh vs State Of Bihar on 26 August, 2011

Equivalent citations: (2011) 3 UC 1930, AIR 2011 SUPREME COURT 3534, 2011 (9) SCC 272, 2011 AIR SCW 5120, AIR 2011 SC (CRIMINAL) 2157, 2012 (2) AIR JHAR R 77, 2011 (9) SCALE 426, (2011) 4 ALLCRILR 478, 2011 CALCRILR 3 498, (2011) 4 CHANDCRIC 32, (2011) 3 UC 1734, (2011) 106 ALLINDCAS 90 (SC), (2012) 1 MAD LJ(CRI) 648, 2011 (106) ALLINDCAS 90, (2012) 2 BOMCR(CRI) 509, (2012) 1 ALLCRIR 296, 2011 (4) KER LT 8 SN, (2011) 3 CURCRIR 425, (2011) 9 SCALE 426, (2011) 50 OCR 449, (2011) 4 RECCRIR 84, (2011) 75 ALLCRIC 202, (2012) 1 ALD(CRL) 895

Bench: Deepak Verma, Asok Kumar Ganguly

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.663 OF 2010

Mohan Singh .....Appellant(s)

- Versus -

State of Bihar ....Respondent(s)

J U D G M E N T

GANGULY, J.

1. This criminal appeal has been preferred from the judgment of the High Court in Criminal Appeal (DB) No. 1338 of 2007, dated 3.9.2008, whereby the High Court upheld the judgment and order of conviction passed by the learned Additional Sessions Judge, Fast Track Court-IV, Motihari, East Champaran in Sessions Trial No. 101/16 of 2006/2007. The learned Sessions Court held the appellant guilty of criminal conspiracy for murder under sections 120B of IPC and of extortion under section 387 of IPC and sentenced him to undergo rigorous imprisonment for life and was fined for Rs.25,000/- for the offence of criminal conspiracy for murder under section 120B, in default of which he was to further undergo simple imprisonment for 1 year. He was further sentenced for seven years rigorous imprisonment under section 387 IPC and was fined Rs.5,000/-, in default of which to undergo simple imprisonment for six months.

2. The facts of the case are that the informant Shri Vikas Kumar Jha gave a fardbeyan to the effect that at about 5.00 P.M. on 23.7.2005, he had received a call on his telephone number 06252-239727, inquiring about his elder brother Shri Anil Kumar Jha. The informant stated before the police that his elder brother, the owner of a medical store, on the said date had been out of town. He submitted that he had communicated the same to the caller. Upon such reply, the caller disclosed himself as Mohan Singh, the appellant herein, and asked the informant to send him Rs.50,000/-. The informant submitted that he had similar conversations with the caller three to four times in the past. However, he then received another telephone call on 25.7.2005 from a cell phone number 9835273765. The caller threatened him that since the demand of money had not been fulfilled, the informant should be ready to face the consequences.

3. Upon his elder brother's return, the informant had narrated the events to him. However, his elder brother did not take the threat seriously.

4. On 3.8.2005, at about 9.00 P.M. when the informant was at a place called Balua Chowk, he had received a call from his driver Shri Dhanai Yadav on his cell phone to the effect that informant's elder brother and their father, Shri Sureshwar Jha, had been shot at while they were in their medical store, and that both of them had been rushed to Sadar Hospital. On reaching Sadar Hospital, the informant saw the dead body of his elder brother. He was intimated by the people there that his father had been shifted to another hospital called Rahman's Nursing Home. He was also told that the shots had been fired by one Laxmi Singh and Niraj Singh. Having heard this, the informant rushed to Rahman's Nursing Home, where his injured father told him that while Niraj Singh cleared the medical store of all the other people, Laxmi Singh had fired shots at him and Anil Kumar Jha with an A.K. 47 rifle, before fleeing from the scene. After narrating such events, his father became unconscious.

5. The informant further stated that his family had actually known the appellant and Laxmi Singh from an earlier incident in 2004, when on the occasion of Durga Puja, the two had sent a messenger to Anil Kumar Jha's medical store, demanding Rs.50,000/- or to face death in the alternative. He

submitted that pursuant to this, they had preferred a complaint before the police, and that the matter was sub judice. He further stated that he had actually met the appellant once prior to the telephone calls when the latter had asked for money, as contribution for celebrations of Sarswati Puja and Durga Puja. The informant thus stated that his father and brother had been attacked by Laxmi Singh and Niraj Singh at the instance of Mohan Singh for not having paid the extortion money. The informant said so on the identification of the voice of the telephone caller as that of the appellant. He, however, did not follow up the calls made on 23rd and 25th of July, 2005 either with the appellant in person, or with the authorities of Motihari jail where the appellant was in fact lodged at the time of the calls. These statements of the informant were supported by the informant's father Sureshwar Jha, and his other brother Sunil Kumar Jha.

6. On the basis of this fardbeyan, Motihari Town Police Station Case No.246/2005 was registered on 3.8.2005 against the appellant Mohan Singh, Laxmi Singh, Niraj Singh and others. The investigating officer submitted that he had known the appellant to have as many as seven criminal cases for murder, kidnapping for ransom and loot, pending against him. However, he submitted that he had received the phone number attributed to the appellant only from the informant.

Though he submitted that as many as nine calls had been made between the phone numbers attributed to the appellant and Laxmi Singh, and that he had retrieved the records of calls made by the number attributed to the appellant and that of the informant, he had not been able to establish as to who were the registered owners of the SIM cards.

7. The learned Sessions Court in the course of trial took note of the fact that identities of the registered owners of the said SIM cards had not been established by the police, but it did not give much emphasis on this on the grounds that the informant's family had known the appellant and Laxmi Singh long enough and had known about their common intention to extort money. On these findings the learned Sessions Court found the appellant guilty.

8. On appeal the learned Division Bench upheld the conviction inter alia on the grounds that the informant himself and his family had known the appellant and Laxmi Singh from before.

9. Even though the High Court in the impugned judgment held that identification by voice and gait is risky, but in a case where the witness identifying the voice had previous acquaintance with the caller, the accused in this case, such identification can be relied upon. The High Court also held that direct evidence in a conspiracy is difficult to be obtained. The case of conspiracy has to be inferred from the conduct of the parties. The High Court relied upon the evidence of the informant, PW.4 and on Exts. 9 and 10 where the conversation between PW.4 and the appellant was recorded. The High Court also relied upon the evidence of PW.1 Dhanai Yadav, who was sitting inside the medical store of the deceased Anil Kumar Jha at the time of the incident.

PW.1 was a witness to the incident of Laxmi Singh firing shots at the deceased and his father Sureshwar Jha. The High Court also relied upon the evidence of PW.2 Surehswar Jha, the injured witness.

The High Court found that the evidence of PW.2 and 4 is unblemished and their evidence cannot be discarded. The High Court also relied upon the evidence of PW.4 as having identified the voice of the appellant.

10. On appreciation of the aforesaid evidence, the High Court came to the conclusion that Mohan Singh was performing one part of the act, and Laxmi Singh performed another part, both performing their parts of the same act. Thus the case of conspiracy was made out.

11. Assailing such finding of the Sessions Court which has been affirmed by the High Court, the learned Counsel appearing for the appellant argued that the appellant cannot be convicted under section 120-B and given the sentence of rigorous imprisonment for life in view of the charges framed against the appellant.

12. In order to appreciate this argument, the charges framed against the appellant are set out below:

> "FIRST - That you, on or about the day of at about or during the period between 23.7.05 & 3.8.05 agreed with Laxmi Narain Singh, Niraj Singh & Pankaj Singh to commit the murder of Anil Jha, in the event of his not fulfilling your demand, as extortion of a sum of Rs.50,000/- and besides the above said agreement you did telephone from Motihari Jail to Vikash Jha in pursuance of the said agreement extending threat of dire consequences if the demand was not met and then on 3.8.05 the offence of murder punishable with death was committed by your companions Laxmi Narain Singh and Niraj Singh and you thereby committed the offence of criminal conspiracy to commit murder of Anil Jha and seriously injured Sureshwar Jha and thereby committed an offence punishable under Section 120-B of the Indian Penal Code, and within my cognizance.
>
> SECONDLY - That you, during the period between 23.7.05 & 3.8.05 at Hospital gate Motihari P.S., Motihari Town Dist. East Champaran, Put Vikash Jha in fear of death and grievous hurt to him and his family members in order to commit extortion on telephone and thereby committed an offence punishable under Section 387 of the Indian Penal Code, and within my cognizance and I hereby direct that you be tried by me on the said the charge.
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> Charges were read over and explained in Hindi to the accused and the accused pleaded not guilty as charged. Let him be tried."

13. Admittedly, no complaint of any prejudice by the appellant was raised either before the trial Court or in the High Court or in the course of examination under Section 313 Cr.P.C.

14. These points have been raised before this Court for the first time. In a case where points relating to errors in framing of charge or even misjoinder of charge are raised before this Court for the first time, such grievances are not normally considered by this Court. Reference in this connection may be made to the decision of a three-Judge Bench of this Court in the case of Mangal Singh and others

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State of Madhya Bharat reported in AIR 1957 SC 199.

Justice Imam delivering a unanimous opinion of the Court held in paragraph 5 at page 201 of the report as follows:-

> "It was, however, urged that there had been misjoinder of charges. This point does not seem to have been urged in the High Court because there is no reference to it in the judgment of that Court and does not seem to have been taken in the Petition for special leave. The appellants cannot, therefore, be permitted to raise this question at this stage."

15. However, instead of refusing to consider the said grievance on the ground of not having been raised at an earlier stage of the proceeding, we propose to examine the same on its merits.

16. The purpose of framing a charge is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial. (See decision of a four-Judge Bench of this Court in V.C. Shukla v. State Through C.B.I., reported in 1980 Supplementary SCC 92 at page 150 and paragraph 110 of the report). Justice Desai delivering a concurring opinion, opined as above.

17. But the question is how to interpret the words in a charge? In this connection, we may refer to the provision of Section 214 of the Code. Section 214 of the Code is set out below:

> "214. Words in charge taken in sense of law under which offence is punishable. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable."

18.The other relevant provisions relating to charge may be noticed as under:

> "211. Contents of charge.- (1) Every charge under this Code shall state the offence with which the accused is charged. (2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.
>
> (3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged. (4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.
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> (5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact date and place of the previous conviction shall be stated in the charge;

and if such statement has been omitted, the Court may add it at any time before sentence is passed.

215. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

464. Effect of omission to frame, or absence of, or error in, charge. (1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction."

19. While examining the aforesaid provisions, we may keep in mind the principles laid down by Justice Vivian Bose in Willie (William) Slaney v. State of Madhya Pradesh reported in (1955) 2 SCR 1140. At page 1165 of the report, the learned judge observed:-

"We see no reason for straining at the meaning of these plain and emphatic provisions unless ritual and form are to be regarded as of the essence in criminal trials. We are unable to find any magic or charm in the ritual of a charge. It is the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent."

20. The aforesaid observation of Justice Vivian Bose in William Slaney (supra) has been expressly approved subsequently by this Court in V.C. Shukla (supra).

21. Reference in this connection may be made to the decision of this Court in the case of Tulsi Ram and others v. State of Uttar Pradesh reported in AIR 1963 SC 666. In that case in paragraph 12 this Court was considering these aspects of the matter and made it clear that a complaint about the charge was never raised at any earlier stage and the learned Judges came to the conclusion that the charge was fully understood by the appellants in that case and they never complained at the appropriate stage that they were confused or bewildered by the charge. The said thing is true here. Therefore, the Court refused to accept any grievance relating to error in the framing of the charge.

22. Subsequently, in the case of State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and another reported in AIR 1963 SC 1850, this Court also had to consider a similar grievance. Both in the case of Tulsi Ram (supra) as also in the case of Cheemalapati (supra) the charges were of conspiracy. The same is also a charge in the instant case. Repelling the said grievance, the learned Judges held that the object in saying what has been set out in the first charge was only to give notice to the accused as to the ambit of the conspiracy to which they will have to answer and nothing more. This Court held that even assuming for a moment that the charge is cumbersome but in the absence of any objection at the proper time and in the absence of any material from which the Court can infer prejudice, such grievances are precluded by reason of provision of Section 225 of the Cr.P.C. Under the present Code it is Section 215 which has been quoted above.

23. Reference in this connection may also be made in the decision of this Court in Rawalpenta Venkalu and another v. The State of Hyderabad reported in AIR 1956 SC 171 at para 10 page 174 of the report. The learned Judges came to the conclusion that although Section 34 is not added to Section 302, the accused had clear notice that they were being charged with the offence of committing murder in pursuance of their common intention. Therefore, the omission to mention Section 34 in the charge has only an academic significance and has not in any way misled the accused. In the instant case the omission of charge of Section 302 has not in any way misled the accused inasmuch as it is made very clear that in the charge that he agreed with the others to commit the murder of Anil Jha. Following the aforesaid ratio there is no doubt that in the instant case from the evidence led by the prosecution the charge of murder has been brought home against the appellant.

24. In K. Prema S. Rao and another v. Yadla Srinivasa Rao and others reported in (2003) 1 SCC 217 this Court held that though the charge specifically under Section 306 IPC was not framed but all the ingredients constituting the offence were mentioned in the statement of charges and in paragraph 22 at page 226 of the report, a three-Judge Bench of this Court held that mere omission or defect in framing of charge does not disable the criminal court from convicting the accused for the offence which is found to have been proved on the evidence on record.

The learned Judges held that provisions of Section 221 Cr.P.C. takes care of such a situation and safeguards the powers of the criminal court to convict an accused for an offence with which he is not charged although on facts found in evidence he could have been charged with such offence. The

learned Judges have also referred to Section 215 of the Cr.P.C., set out above, in support of their contention.

25. Even in the case of Dalbir Singh v. State of U.P., reported in (2004) 5 SCC 334, a three-Judge Bench of this Court held that in view of Section 464 Cr.P.C.

it is possible for the appellate or revisional court to convict the accused for an offence for which no charge was framed unless the court is of the opinion that the failure of justice will occasion in the process. The learned Judges further explained that in order to judge whether there is a failure of justice the Court has to examine whether the accused was aware of the basic ingredients of the offence for which he is being convicted and whether the main facts sought to be established against him were explained to him clearly and whether he got a fair chance to defend himself. If we follow these tests, we have no hesitation that in the instant case the accused had clear notice of what was alleged against him and he had adequate opportunity of defending himself against what was alleged against him.

26. In State of Uttar Pradesh v. Paras Nath Singh reported in (2009) 6 SCC 372 this Court, setting out Section 464 of Cr.P.C., further held that whether there is failure of justice or not has to be proved by the accused. In the instant case no such argument was ever made before the Trial Court or even in the High Court and we are satisfied from the materials on record that no failure of justice has been occasioned in any way nor has the appellant suffered any prejudice.

27. In Annareddy Sambasiva Reddy and others v. State of Andhra Pradesh reported in (2009) 12 SCC 546 this court again had occasion to deal with the same question and referred to Section 464 of Cr.P.C. In paragraph 55 at page 567 of the report, this Court came to the conclusion that if the ingredients of the section charged with are obvious and implicit, conviction under such head can be sustained irrespective of the fact whether the said section has been mentioned or not in the charge. The basic question is one of prejudice.

28. In view of such consistent opinion of this Court, we are of the view that no prejudice has been caused to the appellant for non-mentioning of Section 302 I.P.C. in the charge since all the ingredients of the offence were disclosed. The appellant had full notice and had ample opportunity to defend himself against the same and at no earlier stage of the proceedings, the appellant had raised any grievance.

Apart from that, on overall consideration of the facts and circumstances of this case we do not find that the appellant suffered any prejudice nor has there been any failure of justice.

29. In the instant case, in the charge it has been clearly mentioned that the accused-appellant has committed the murder of Anil Jha. By mentioning that the accused has committed the murder of Anil Jha all the ingredients of the charge have been mentioned and the requirement of Section 211, sub-section (2) has been complied with. Therefore, we do not find any substance in the aforesaid grievance of the appellant.

30. Now the only other point on which argument has been made on behalf of the appellant is that in the instant case appellant was in jail at the time of the commission of the offence. It has been submitted that his involvement in the whole episode has been argued for only on the evidence of PW.4 who is said to have identified his voice on the basis of some telephone calls.

31. These are essentially questions of fact and after a concurrent finding by two courts normally this Court in an appeal against such finding is slow and circumspect to upset such finding unless this Court finds the finding to be perverse.

32. However, on the legal issue one thing is clear that identification by voice has to be considered by this Court carefully and on this aspect some guidelines have been laid down by this Court in the case of Kirpal Singh v. The State of Uttar Pradesh reported in AIR 1965 SC 712. In dealing with the question of voice identification, construing the provisions of Section 9 of the Indian Evidence Act, this Court held:

> "...It is true that the evidence about identification of a person by the timbre of his voice depending upon subtle variations in the overtones when the person recognising is not familiar with the person recognised may be some-what risky in a criminal trial. But the appellant was intimately known to Rakkha Singh and for more than a fortnight before the date of the offence he had met the appellant on several occasions in connection with the dispute about the sugarcane crop...."

(para 4, page 714 of the report)

33. Relying on such identification by voice this Court held in Kripal Singh (supra) that it cannot come to the conclusion that the identification of the assailant by Rakkha Singh was so improbable that this Court would be justified in disagreeing with the opinion of the Court which saw the witness and formed its opinion as to its credibility and also of the High Court which considered the evidence against the appellant and accepted the testimony (see para 4, page 714 of the report). The same principles will apply here. PW.4 in his evidence clearly stated that the appellant gave him a phone call asking for money on 23.7.2005 and again on 25.7.2005 when the appellant threatened him of dire consequences for not paying the money. PW.4 also stated in his evidence that he got an ID caller installed in his phone and he informed the police of the phone number of the caller which is of the appellant. PW.4 also stated in his evidence that he had direct talks with the appellant at hospital chawk prior to the incident when he used to demand money from him and other shopkeepers at the time of Durga Puja and Saraswati Puja. PW.4 specifically stated that he can identify the voice of Mohan Singh. The first I.O. of the case (PW.6) in his evidence also stated that during investigation mobile No.9835273765 of Mohan Singh was found and mobile No.9431428630 of Laxmi Singh was also found.

P.W. 8, the other I.O. of the case stated that on 23.7.2005, four calls were made between the mobile phones of Laxmi Singh and Mohan Singh. Then six more calls were made by Laxmi Singh to Mohan Singh on 3.08.2005, i.e. on the day of the incident itself.

The printout details of these phone calls were produced before the Court. So both the Trial Court and High Court considered the evidence of PW.6 and PW.8 who were the investigating officers in this case, apart from the evidence of PW.4, other witnesses and the materials on record before coming to the conclusion. The fact that the name of registered allottees the SIM cards of these mobile phones could not be traced is not relevant in this connection. This Court finds that from para 19 onwards of the judgment by the High Court these aspects have received due consideration.

34. The learned counsel for the appellant relied on some judgments in support of his contention that in the facts of this case voice identification cannot be accepted. The learned counsel relied on a judgment of this Court in the case of Nilesh Dinkar Paradkar v. State of Maharashtra reported in (2011) 4 SCC

143. In that case the voice in the telephone was tapped and then the voice was recorded in a cassette and the cassette was then played to identify the voice. Therefore, there is a substantial factual difference with the facts in the case of Nilesh (supra) and the facts of the present case. Apart from that in Nilesh (supra), the High Court acquitted A1 to A4 and this Court finds that the evidence against Nilesh was identical. Therefore, this Court held that the conclusion of the High court in acquitting Accused 1, 2, 3 and 4 has virtually "destroyed the entire substratum of the prosecution case" (see para 28 of the report).

Since that decision was passed on tape recorded version of the voice, the principles decided in that case, even though are unexceptionable, cannot be applied to the present case.

35. The other case on which reliance was placed by the learned counsel for the appellant was in the case of Inspector of Police, Tamil Nadu v. Palanisamy alias Selvan reported in (2008) 14 SCC 495. In that case this Court held that identification from voice is possible but in that case no evidence was adduced to show that witnesses were closely acquainted with the accused to identify him from his voice and that too from very short replies. Therefore, this case factually stands on a different footing. In the instant case the evidence of PW.4 that he knows the voice of the appellant was not challenged nor was it challenged that the mobile no. 9835273765 is not that of the appellant. Nor has the evidence of PW.8 been challenged that on 3.8.2005 eight calls were recorded between the mobiles of the appellant and his conspirator Laxmi Singh.

36. The next decision on which reliance was placed by the learned counsel for the appellant was rendered in the case of Saju v. State of Kerala reported in (2001) 1 SCC 378. In Saju (supra) this Court explained the principles of Section 10 of the Evidence Act, as follows:-

> "Evidene Act, 1872 - Sec.10 - Condition for applicability of Act or action of one of the accused cannot be used as evidence against the other. However, an exception has been carved out under Section 10 of the Evidence Act in the case of conspiracy. To attract the applicability of Section 10 of the Evidence Act, the court must have reasonable ground to believe that two or more persons had conspired together for committing an offence. It is only then that the evidence of action or statement made by one of the accused could be used as evidence against the other."

37. If we apply the aforesaid principles to the facts of the present case it is clear that there is enough evidence to furnish reasonable ground to believe that both the appellant and Laxmi Singh had conspired together for committing the offence.

Therefore, the principles of this case do not help the appellant.

38. Learned counsel for the appellant also relied upon the decision of this Court in the case of Yogesh alias Sachin Jagdish Joshi v. State of Maharashtra reported in (2008) 10 SCC 394. In paragraph 25 at page 402 of the report this Court laid down the following principles:-

> "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."

39. In view of the aforesaid principles, this Court finds that no assistance can be drawn from the aforesaid decision to the case of the appellant in this case.

40. Reliance was also placed on the decision of this Court in the case of S. Arul Raja v. State of Tamil Nadu reported in (2010) 8 SCC 233. In that case this Court held that mere circumstantial evidence to prove the involvement of the accused is not sufficient to meet the requirements of criminal conspiracy and meeting of minds to form a criminal conspiracy has to be proved by placing substantive evidence. In the instant case, as discussed above, substantive evidence was placed to prove the meeting of minds between the appellant and Laxmi Singh about the murder of the victim. In evidence which has been noted hereinabove in the earlier part of the judgment it clearly shows that there is substantial piece of evidence to prove criminal conspiracy.

41. Reliance was also placed by the learned counsel for the appellant on the decision of this Court in the case of Mohd. Khalid v. State of West Bengal reported in (2002) 7 SCC 334. In that case, this court held that offence of conspiracy can be proved by either direct or circumstantial evidence. In paragraph 24 at page 354 of the report the following observations have been made:-

> "Conspiracies are not hatched in the open, by their nature, they are secretly planned, they can be proved even by circumstantial evidence, the lack of direct evidence relating to conspiracy has no consequence."

42. For the reasons discussed above, this Court does not find that there is any reason to interfere with the concurrent finding in the instant case. This Court, therefore, does not find any reason to take a view different from the one taken by the High Court.

43. The appeal is dismissed and the conviction of the appellant under Section 120B of IPC for life imprisonment is affirmed.

.....J.

(ASOK KUMAR GANGULY)

.....J.

New Delhi (DEEPAK VERMA)

August 26, 2011