

STATE OF NCT OF DELHI

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v.

SHIV CHARAN BANSAL & ORS.

(Criminal Appeal No. 2248 of 2010)

DECEMBER 5, 2019

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[INDU MALHOTRA AND R. SUBHASH REDDY, JJ.]

Code of Criminal Procedure, 1973: s.227 – Appeal by State and complainant against the discharge of accused persons – Prosecution case was that the victim-deceased was murdered in his house – The alleged contract killer came as a courier boy wearing black cap and goggles – The wife of the complainant identified him in investigation – As per the version of son/nephew and brothers of the deceased, the deceased had invested a substantial amount of money in committees run by accused-SCB and his son accused-SB which they were reluctant to return and were also trying to usurp share of the deceased in a factory – Statement of another brother of the deceased was that he and his son were receiving threatening calls from accused-NM, accused-LM and their associates and that these accused were responsible for murder of deceased – NM, LM and accused-Advocate-RS were arrested when they were travelling in a car and black photo frame, black cap, black goggles and a photo of the deceased were recovered from the car – NM got the Getz car recovered from the house in his village, in which the contract killer – JSS allegedly travelled to the site of occurrence to murder the deceased – The unlicensed pistol along with two live cartridges were recovered from the office of accused-SS – During investigation, the Call Detail Records of the accused were collected by the Investigating Officer – As per the version of the prosecution, NM had asked his cousin brother LM to carry out the murder – After initially agreeing, LM subsequently backed out – Thereafter, JSS was asked to execute the murder – F.S.L Report recorded that the lead recovered from the body of the deceased was fired from the pistol recovered from the office of SS – As per the report of the handwriting expert, the specimen handwriting of JSS matched the writing on the envelope which allegedly was carried by JSS to the house of the deceased – NM borrowed a car, unlicenced pistol with five cartridges and

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- A took JSS to the place of occurrence and waited in the car for JSS while he went to murder the deceased and then helped JSS to get away – NM was in continuous contact with accused-SB before and after the incident – The records of the committees run by SCB were allegedly destroyed by him – This would a strong suspicion about
- B the conduct of SCB – The destruction of the records of the committees, which would have revealed the substantial investments made by the deceased was an incriminating factor – The circumstance of absconding of accused immediately after the murder would be also admissible as relevant ‘conduct’ under s.8 of the Evidence Act – The contemporaneous Call Detail Records (CDRs) between SB and NM, who accompanied JSS would also constitute strong material for framing the charge against all the accused – Charge Sheet was filed against all the accused – Sessions Court held that there was common intention between NM and JSS in the act of killing the deceased – However LM was
- D discharged as there was not sufficient evidence to connect him with the crime – With respect to RS, it was held that evidence was not sufficient to frame charges against him as he had only tendered advice to NM to the effect that he should not use his licensed pistol for carrying out the murder – With respect to SS, the Sessions Court held that the unlicensed pistol along with two live cartridges were
- E recovered from his office and charged him only for the offence u/ S. 25 of the Arms Act for keeping an unlicensed firearm in his possession – Sessions Court discharged SCB since the prosecution had collected evidence against him only in the form of disclosure statements from the accused persons after arrest – Sessions Court
- F charged SB for the offence u/S. 25 of the Arms Act, since he got the licensed pistol belonging to NM recovered from his factory premises – Sessions Court held that the prosecution failed to make out a prima facie case against RS, LM, SCB who were discharged – The State and the complainant filed Revision before the High Court – High Court held that NM, SB, JSS were to be charged u/ s.302 read with s.34 IPC read with 120B IPC – The Judgment of the Sessions Court ordering discharge of SCB, SS, LM, RS was affirmed by the High Court – Hence the instant appeal by the State and the complainant – Held: The present case is one where the prosecution has alleged that there was a criminal conspiracy to
- H murder the deceased by all the accused – The crime was not

committed at the spur of the moment, but was preceded by meticulous planning where each of the accused played a separate role to achieve the common illegal object of carrying out the murder of the deceased – The manner and circumstances in which the offence was committed, and the level of involvement of the accused persons were relevant factors – Each conspirator played his separate part in one integrated and united effort to achieve the common purpose – Each one was aware that he has a part to play in the general conspiracy, to accomplish the common object – Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused – The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution – In cases of criminal conspiracy, better evidence than acts and statements of co-conspirators is hardly ever available – There was ample material brought on record which created a grave suspicion about the involvement of SCB, LM, SS in the murder of the deceased – Accordingly, Sessions Court is directed to frame charges against SCB under s.302 r/w s.34 IPC and s.120B and s.201; LM under s.302 r/w s.34 and s.120B; and against SS under s.302 r/w s.34 and s.120B and ss.25, 27, 54 and 59 of Arms Act – Penal Code, 1860 – s.302 r/w s.34.

Code of Criminal Procedure, 1973: ss.227, 228 – Scope of – Held: The Court while considering the question of framing charges under s.227 has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused – If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial – At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted.

Code of Criminal Procedure, 1973: ss.223, 386, 391 – Held: s.223 provides that persons accused of the same offence, committed in the course of the same transaction, must be jointly charged and tried – In the instant case, on account of the inconsistency in

- A *framing charges by the Sessions Court against the six accused, the trial got truncated – The trial with respect to three accused i.e. SB, NM and JSS proceeded in the absence of the other three accused viz. SCB, LM and SS – This was a case of criminal conspiracy based on circumstantial evidence – Since the trial in the instant case got truncated, it is necessary that the trial of the remaining three accused proceeds forthwith in accordance with law – With respect to the other three accused i.e. SB, NM and JSS the trial was conducted in the absence of the other three alleged co-conspirators – The order of acquittal with respect to SB and NM is pending before the High Court – s.386 defines the powers of*
- B *the appellate court in dealing with appeals – Under clause (a) of s.386, the High Court may reverse the order of acquittal and direct that further enquiry be made, or the accused may be re-tried, or may find him guilty and pass sentence thereon – As an appellate Court, the High Court may take further evidence while considering the appeals under s.391, if it is considered necessary, and take*
- C *additional evidence on record. The High Court may also permit recording of statements under s.313 if considered necessary – High Court may take up the pending appeals in the case of SB, NM and JSS, after the conclusion of the trial of SCB, LM and SS, the remaining accused by the Sessions Court in this case.*
- D **Partly allowing the appeals, the Court**

HELD: 1.1 Scope of Section 227 and 228 of the Cr.P.C.

- E **At the stage of framing charges under S.227 and S.228 Cr.P.C, the Court is required to consider whether there was sufficient material on record to frame charges against accused-SCB, accused-SS, accused-LM and accused-RS. The prosecution alleged that the offences u/S. 120B, S.302 r.w. S.120B/34, S.201 IPC and S.25 of the Arms Act ought to have been framed. The Court while considering the question of framing charges under Section 227 of the Cr.P.C has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case has been made out against the accused. The test to determine prima facie case would depend upon the facts of each case. If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial. The probative value of the evidence brought on record cannot be gone into at the stage of framing**
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charges. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence. At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted. [Para 32] [1175-B-F]

1.2 **Criminal Conspiracy.** The present case is one where the prosecution has alleged that there was a criminal conspiracy to murder the deceased by all the accused. The crime was not committed at the spur of the moment, but was preceded by meticulous planning where each of the accused have played a separate role to achieve the common illegal object of carrying out the murder of the deceased. A criminal conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. The manner and circumstances in which the offence has been committed, and the level of involvement of the accused persons are relevant factors. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object. In the facts of the instant case, there was ample material brought on record which created a grave suspicion about the involvement of SCB, LM, SS in the murder of the deceased. [Para 32] [1176-D-G; 1177-A-F]

Accused-SCB. Both the Sessions Court and the High Court have noted that all the witnesses have clearly attributed the murder to SCB and his son SB. The motive of the crime was to misappropriate the investments made by the deceased in the committees of SCB. The son of the deceased has further deposed that the further circumstance was on account of the business dealings between the families of the deceased and SCB. As per the case of the prosecution, the murder was contrived by SCB and his son SB with NM and the other co-conspirators being LM who arranged the contract killer-JSS, SS who provided the weapon of offence which was recovered from his office, along with live cartridges. The contemporaneous Call Detail Records (CDRs) between SB and NM, who accompanied JSS-the contract killer, would constitute strong material for framing the charge

- A against all the accused. The murder took place at about 4:30 p.m. NM from his cell phone made a call at 3:51 p.m. to SB on his cell phone prior to the execution of the crime. After the murder was committed, NM called SB on his cell phone at 4:48 p.m. These call records in quick succession immediately before and after the murder was committed, lead to a grave suspicion
- B about the complicity of these accused. The Call Detail Records reveal that the accused were in close contact and communication with each other both before and after the occurrence. The record of the Sessions Court show that the Call Detail Records of SCB, which was a crucial piece of evidence was deliberately not placed
- C by the I.O. along with the Charge Sheet. The missing Call Detail Records of only SCB creates a strong suspicion against him. The records of the committees run by SCB were allegedly destroyed. This would create a strong suspicion about the conduct of SCB. In his disclosure statement, SCB stated that he had all the records of the committees. However, two days later, he changed
- D his version and stated that the committee records have been destroyed by his son SB. The prosecution has alleged that the records of the committees were burnt/destroyed by the father-son duo. The destruction of the records of the committees, which would have revealed the substantial investments made by the deceased is an incriminating factor. The conduct of SCB after the murder was committed, is also of relevance. The police apprehended SB on 29.03.2006 from his factory. SCB remained absconding after the murder was committed on 21.03.2006, and did not join the investigation despite efforts by the Police. He was apprehended after more than one month. The said
- F circumstance of absconding immediately after the murder was committed, would be admissible as relevant ‘conduct’ u/S.8 of the Evidence Act. The materials gathered by the prosecution raise a strong suspicion against both SCB and his son SB in hatching the conspiracy for the murder of the deceased. [Para 32] [1179-A-H; 1180-A-H; 1181-A]
- G Accused-LM – The prosecution relied upon the statement of nephew of the deceased. The said witness in his statement u/S. 161 Cr.P.C, which was recorded soon after the murder stated that NM, LM, SB and his friends used to threaten him over the phone. The disclosure statement made by NM reveals
- H that initially he had asked LM to carry out the murder. LM had

full knowledge of the criminal conspiracy hatched to murder the deceased. Soon after the murder took place, NM and LM were absconding. Since LM did not join the investigation after the commission of the crime, the conduct of the accused in absconding would be admissible as relevant ‘conduct’ u/S. 8 of the Indian Evidence Act. On 29.03.2006 i.e. eight days after the murder took place, three of the accused viz. NM, LM and RS were apprehended by the police while they were travelling in an Esteem car. The police recovered incriminating objects i.e. photo of the deceased which was given to the contract killer for identification, goggles and black cap worn by the contract killer-JSS to conceal his identity, from the car. The Call Detail Records of LM reveal that from his cell phone, he was in communication with JSS on his cell prior and subsequent to the commission of the crime. The Courts below were unjustified in not framing the charges u/S., 302 r.w. S.34, S120B IPC against accused LM. [Para 32] [1181-F-G; 1182-A-F]

Accused-SS – As per the case of the prosecution, accused-SS provided the weapon of offence. Furthermore, after the crime was committed, SS remained absconding for a period of 75 days. The recovery of the weapon of offence i.e. an unlicensed 7.65 mm bore pistol along with two live cartridges from the office of this accused creates a strong suspicion of his involvement in the conspiracy. The Ballistic Report has certified that the three used cartridges recovered from the site of occurrence, and the lead retrieved from the body of the deceased, matched with the live cartridges recovered from the house of accused-SS and were fired from the unlicensed pistol recovered from house of accused- SS. The circumstance of the weapon of offence being found in the custody and possession of SS would be admissible as “conduct” under Section 8 of the Indian Evidence Act, irrespective of the statements made by the co accused. The crucial recovery of the weapon of offence from the house of SS was a very important circumstance in the chain of events, which was sufficient to proceed against him in trial u/S. 302 r.w. S.34 and 120B IPC. The call detail records produced before the Sessions Court, reveals the communication between NM and SS on the date of the murder, which is relevant material as per Section 8 of the Evidence Act. It is surprising that the Sessions Court and the High Court having accepted the recovery of the

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- A unlicensed weapon from the office of SS, charged him only with the offence u/S. 25 of the Arms Act. [Para 32] [1182-G-H; 1183-A-H]
- Accused-RS. With respect to the discharge of RS, the Order of the Sessions Court and High Court is not disturbed,
- B as there is not sufficient material to prosecute him. [Para 32] [1184-A]
- Accused-NM – He was charged u/S. 302 r.w. S.34, S. 201 IPC and S. 25 and 29(b) of the Arms Act by the Sessions Court. The Sessions Court acquitted him. The challenge against his
- C acquittal is pending determination. [Para 32] [1184-B-C]
- D Section 223 of the Cr.P.C. provides that persons accused of the same offence, committed in the course of the same transaction, must be jointly charged and tried. In the present case, on account of the inconsistency in framing charges by the Sessions Court against the six accused, the trial has got truncated. The trial with respect to three accused i.e. SB, NM and JSS has proceeded in the absence of the other three accused viz. SCB, LM and SS. The present case is one of criminal conspiracy based on circumstantial evidence. For a case of criminal conspiracy to be established, each link in the chain of
- E circumstances would get completed, only if the evidence collected by the prosecution against all the accused was taken into consideration holistically. Since the trial in the present case has got truncated, it is necessary that the trial of the remaining three accused proceeds forthwith in accordance with law. With respect to the other three accused i.e. SB, NM and JSS the trial
- F was conducted in the absence of the other three alleged co-conspirators. The Order of acquittal with respect to SB and NM is pending before the High Court. S.386 Cr.P.C. defines the powers of the appellate court in dealing with appeals. Clause (a) of S.386 Cr.P.C. is restricted to the powers of the High Court
- G since an appeal against an Order of acquittal lies to the High Court. The appellate court may direct the accused to be re-tried, not only when it deals with an appeal against acquittal, but also when it deals with an appeal against conviction. Under clause (a) the High Court may reverse the Order of acquittal and direct that further enquiry be made, or the accused may be re-tried,
- H or may find him guilty and pass sentence thereon. As an

appellate Court, the High Court may take further evidence while considering the Appeals u/S.391 Cr.P.C, if it is considered necessary, and take additional evidence on record. The High Court may also permit recording of statements u/S.313 Cr.P.C, if considered necessary. The High Court may take up the pending appeals in the case of SB, NM and JSS, after the conclusion of the trial of SCB, LM and SS, the remaining accused by the Sessions Court. The Additional Sessions Judge, Rohini Courts, Delhi is directed to frame charges against SCB u/S. 302 r.w. S.34 IPC and S. 120B, and S.201 IPC and proceed with the trial in accordance with law; against LM u/S. 302 r.w. S.34 IPC and S.120B IPC and proceed with the trial in accordance with law and SS u/S.302 r.w. 34 IPC and S. 120B IPC, and S. 25, 27, 54 and 59 of the Arms Act. [Para 32] [1184-D-H; 1185-A-E-G; 1186-A-B]

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State of Bihar v. Ramesh Singh (1977) 4 SCC 39 : [1978] 1 SCR 257 ; Dipakbhai Jagdishchandra Patel v. State of Gujarat and Another (2019) SCC Online SC 588 ; Isaac alias Kishore v. Ronald Cheriyan & Ors (2018) 2 SCC 278 : [2018] 1 SCR 217 ; Alister Anthony Pareira v. State of Maharashtra (2012) 2 SCC 648 : [2012] 1 SCR 145 ; Asraf Ali v. State of Assam (2008) 16 SCC 328 : [2008] 10 SCR 1115 – relied on.

State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru (2005) 11 SCC 600 : [2005] 2 Suppl. SCR 79 ; Kehar Singh & Ors. v. State (Delhi Administration) (1988) 3 SCC 609 : [1988] 2 Suppl. SCR 24 – referred to.

Case Law Reference

[1978] 1 SCR 257	relied on	Para 32
[2005] 2 Suppl. SCR 79	referred to	Para 32
[1988] 2 Suppl. SCR 24	referred to	Para 32
[2018] 1 SCR 217	relied on	Para 32
[2012] 1 SCR 145	relied on	Para 32
[2008] 10 SCR 1115	relied on	Para 32

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2248 of 2010.

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- A From the Judgment and Order dated 29.05.2009 of the High Court of Delhi at New Delhi in Criminal Revision No. 335 of 2008
With
Criminal Appeal No. 2247 of 2010.
- B Mrs. Aiswariya Bhati, R. Basant, Sidharth Luthra, Sr. Advs., Braj Kishore Mishra, Sanjiv Jha, Ms. Aparna Jha, Ms. Kriti Sondhi, Abhishek Yadav, Ms. Suhasini Sen, Sachin Sharma, B. V. Balaram Das, Himanshu Nailwal, Vishnu Pazhanganat, Ankur Garg (for Ms. Pallavi Pratap), Sumeer Sodhi, Amitabh Sinha, Danish Aftab Chowdhury, Anil, Imraj Rautela, Ankit Dhawan, Aroon Menon (for Yash Pal Dhingra),
C V. K. Sidharthan, Vineet Bhagat, Advs. for the appearing parties.

The Judgment of the Court was delivered by

INDU MALHOTRA, J.

1. The present Criminal Appeals have been filed by the State D (Criminal Appeal No. 2248 of 2010) and the complainant – Kanta Devi (Criminal Appeal No. 2247 of 2010) to challenge the Order of Discharge granted to Shiv Charan Bansal, Lalit Mann @ Nanhe, Shailendra Singh and Rajbir Singh by the Delhi High Court.
2. The factual matrix from which the present Appeals arise from E is the filing of F.I.R No. 200/2006 by the Complainant Kanta Devi – widow of late S.N. Gupta on 21.03.2006 with the Police Station Mangolpuri, Delhi under Sections 120B, 302, 201 r.w. S.34 IPC and Sections 25, 27, 54, 59 of the Arms Act. The Complainant stated that on 21.03.2006, she was in the house with her husband – S.N. Gupta. At about 4:30 p.m., the doorbell rang, when a man aged between 25 to F 30 years having a beard was standing at the gate, wearing spectacles and a black cap on his head, carrying a bag on his shoulder. He said that he had brought a courier from a bank addressed to S.N. Gupta, and would hand it over to him personally. She informed her husband about the courier. S.N. Gupta went to the main gate, while the informant G returned to the kitchen. She then heard the sound of 2 or 3 gunshots from the gate. She rushed towards the gate and found that her husband had fallen on the floor, and was bleeding on account of gunshot injuries. She shouted for help, when the neighbours came and rushed her husband to Jaipur Golden Hospital, where he was declared dead. She stated that she would be able to recognise the man who had shot her H husband.

3. Sub-Inspector Dharambir Singh along with Constable Vijay A Kumar, and Constable Prasan Singh reached the spot, and recovered 3 used cartridges and blood-stained slippers from the scene of occurrence.

4. On the date of occurrence, the I.O. recorded the statement B of Rajesh Gupta s/o the deceased u/S. 161 Cr.P.C. Rajesh Gupta handed over the envelope to the Police which was carried by the assailant addressed to his father S.N. Gupta at the time of the murder. Rajesh Gupta clearly attributed the murder to Shiv Charan Bansal and his son Sachin Bansal. He stated that he and his father S.N. Gupta were members of several chit fund committees run by Shiv Charan C Bansal and his son Sachin Bansal. Rajesh Gupta and his father S.N. Gupta had put in a substantial amount of money in those committees. He further stated that they were reluctant to return the money invested in the committees to the deceased.

Rajesh Gupta further stated that he had entered into a D partnership with Sachin Bansal in the firm M/s Accent Shoes Pvt. Ltd., which had its factory in Bahadurgarh. Rajesh Gupta stated that he wanted to separate from the partnership because Shiv Charan Bansal and his son Sachin Bansal had usurped the share of his father S.N. Gupta – deceased and were now trying to usurp the factory at Bahadurgarh. It was on account of these reasons that they have got E the murder of his father committed.

5. On the same date, the statement of Satish Gupta, brother of F the deceased was recorded u/S. 161 Cr.P.C. wherein he stated that he had invested in the committees run by Shiv Charan Bansal and his son Sachin Bansal. He further stated that his brother late S.N. Gupta, had invested large amounts of money in these committees. Shiv Charan Bansal and his son were refusing to return the money owed to both him and his brother. The deceased had told his brother that Shiv Charan Bansal and his son Sachin Bansal wanted to grab the factory at G D-268, Mangolpuri Industrial Area, after the partnership had been dissolved. He also attributed the murder of his brother – S.N. Gupta to Shiv Charan Bansal and his son.

6. The statement of Suresh Gupta, other brother of the deceased H S.N. Gupta, was also recorded on the date of the occurrence u/S. 161 Cr.P.C. He stated that he was running his own business, and that

- A Narendra Mann, Lalit Mann and their friends would make threatening calls to his son Naveen Gupta for money. Subsequently, Suresh Gupta also received threats from these persons, who visited his house several times to threaten him and his son, and stated that they would kill them and other family members. On the advice of his brother late S.N. Gupta,
- B a complaint was lodged against Narendra Mann, Lalit Mann and their associates at Mangolpuri Police Station. He stated that his brother had been killed by Narendra Mann, Lalit Mann and his friends.

7. Naveen Gupta @ Cheenu s/o Suresh Gupta, nephew of the deceased S.N. Gupta, in his statement u/S. 161 Cr.P.C, stated that he

- C had been receiving threats from Narendra Mann, Lalit Mann, Sachin Bansal and their friends as being the cause for the murder of the deceased.

8. On 01.06.2006, the statement of Ajit Prasad Gupta – third brother of the deceased, was recorded u/S.164 Cr.P.C., wherein he

- D deposed that he had participated in various Chit Fund Committees run by Shiv Charan Bansal and his son Sachin Bansal. He stated that his brother late S.N. Gupta had invested in most of the Committees run by Shiv Charan Bansal and Sachin Bansal, who were refusing to return the money invested by the deceased.

9. On 31.05.2006, the statement of an independent witness

- E Ashok Kumar Agarwal was recorded u/S. 164 Cr.P.C. The said witness stated that he had invested money in the committees run by Shiv Charan Bansal and his son Sachin Bansal. He further deposed that the deceased S.N. Gupta had also invested a large sum of money in almost all the committees run by accused – Shiv Charan Bansal and his son Sachin F Bansal.

10. On 22.03.2006, the post mortem of the deceased was carried out at Sanjay Gandhi Memorial Hospital, Mangolpuri, wherein it was recorded that the deceased was brought dead at 4:50 p.m.

- G The Autopsy Surgeon found three entry wound points on the chest of the deceased. The lead of the bullets were recovered and handed over to the Police. The post mortem records that the death was caused by the following firearm injuries to the chest:

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 - (i) entry wound of firearm present on the chest of size 1.5 cm x 104, 6.5 cm from midline and 6 cm above and 1 cm medial to the lt nipple;

- (ii) entry wound of firearm present over outer and upper margin of Lt arcola of size 1.3 cm x 0.5 cm with collar of abrasion fracturing around that; A
- (iii) entry wound of firearm present over lt. Hypochondrium of size 1.6 cm x 1.0 cm.

It was recorded that the cause of death was shock due to assault by firearm and injury to the chest viscera and aorta. B

The Police recovered the three used cartridges from the spot of occurrence. The lead taken out from the body of the deceased – S.N. Gupta was sent for forensic analysis to the Forensic Science Laboratory. C

11. During investigation, Sachin Bansal was arrested on 29.03.2006. His disclosure statement was recorded. Narendra Mann, his brother Lalit Mann, and the advocate - Rajbir Singh were arrested on the same date, when they were traveling in an Esteem Car bearing No. DL 3C AG 6565. A black photo frame, a black cap, black goggles, and a photo of the deceased were recovered from the Esteem Car. D

12. Narendra Mann made a disclosure and showed the shop from where he purchased the caps and the goggles. He offered to get Shailendra Singh arrested, stating that it was Shailendra Singh who had given the weapon of offence i.e. unlicensed pistol to be used for the murder. Narendra Mann got the Getz car recovered from the house in his village, in which the contract killer – Joginder Singh Sodhi allegedly travelled to the site of occurrence to murder S.N. Gupta. E

A second set of black cap and goggles were recovered from the Getz car. Narendra Mann also offered to get Joginder Singh Sodhi – the contact killer arrested. F

13. The unlicensed pistol along with two live cartridges were recovered from the office of accused - Shailendra Singh i.e. Flat No. A-11/35, Sector 7, Rohini, Delhi.

14. Disclosure Statements were made by Lalit Mann, Rajbir Singh and Sachin Bansal on 29.03.2006. G

15. On 30.03.2006, Joginder Singh Sodhi - the contract killer was arrested.

The Test Identification Parade (“TIP”) was conducted on 10.04.2006. Joginder Singh refused to participate in the judicial TIP. H

A The Complainant – Kanta Devi identified him as the assailant during the investigation of the case.

16. On 04.06.2006, Shailendra Singh was arrested. Shailendra Singh identified the place from where the unlicensed pistol was recovered.

B 17. During investigation, notice was issued to Shiv Charan Bansal to join the investigation. However, Shiv Charan Bansal remained absconding for over a month. He was apprehended on 25.04.2006.

C 18. During investigation, the Call Detail Records of the accused were collected by the Investigating Officer on 09.06.2006.

We have perused the record of the Sessions Court, and find that the Call Detail Records of Shiv Charan Bansal are missing from the file.

D 19. The Charge Sheet was filed on 22.06.2006 against the following 7 accused - Narendra Mann, Lalit Mann, Rajbir Singh - advocate, Joginder Singh Sodhi, Sachin Bansal, Shiv Charan Bansal and Shailendra Singh for offences under S.120B, 302, and 201 read with S.34 IPC and S. 25 Arms Act.

E 20. The F.S.L Report records that the lead recovered from the body of the deceased was fired from the pistol recovered from the office of the accused – Shailendra Singh.

F 21. The envelope addressed to the deceased S.N. Gupta carried by the contract killer – Joginder Singh Sodhi was recovered from Rajesh Gupta s/o deceased S.N. Gupta. As per the report of the handwriting expert, the specimen handwriting of Joginder Singh Sodhi matched the writing on the envelope.

G 22. On 17.11.2006, the statement of Ramesh was recorded u/S. 161 Cr.P.C by the Police. He stated that he is a property dealer in Rohini, Delhi and had arranged the flat for Shailendra Singh, which was registered in the name of his wife Pooja Singh. Shailendra Singh used the said flat for his financing business. The unlicensed pistol along with two live cartridges were recovered from the office of Shailendra Singh.

H 23. The Forensic Report, Handwriting expert Report and the Ballistic Report were placed on record along with a Supplementary Charge on 26.11.2006.

24. As per the case of the prosecution, the material gathered during the investigation revealed a larger criminal conspiracy in which all the accused persons had participated. Shiv Charan Bansal and his son Sachin Bansal were in the business of running committees where monies would be invested. S.N. Gupta – the deceased and his son Rajesh Gupta had invested a substantial amount of money in these committees. Rajesh Gupta had been in partnership with Shiv Charan Bansal in a firm M/s Akash International which was subsequently dissolved. Rajesh Gupta and Sachin Bansal were also running another firm i.e. M/s. Accent Shoes Pvt. Ltd., the factory of which was located at Bahadurgarh. Rajesh Gupta and his father late S.N. Gupta had invested a substantial amount of money in these businesses. The monies invested in this firm by S.N. Gupta and his son were not returned by Shiv Charan Bansal and Sachin Bansal. The apprehension expressed by deceased S.N. Gupta to his brother Suresh Gupta was that the accused Shiv Charan Bansal and Sachin Bansal might take over the factory at Bahadurgarh. When S.N. Gupta and Rajesh Gupta would demand return of their investment in the factory at Bahadurgarh, Shiv Charan Bansal and Sachin Bansal would refuse on one pretext or the other.

According to the prosecution, Narendra Mann had given seven lakhs to Naveen Gupta – nephew of the deceased on the recommendation made by Sachin Bansal. Together with interest, the amount allegedly owed to Narendra Mann by Naveen Gupta worked out to about fifteen lakhs. Narendra Mann demanded the amount owed to him from Naveen Gupta and his father. Instead of repaying him the money, they lodged a Complaint against him with the Police. Narendra Mann spoke to Sachin Bansal, and asked him to return the monies which were owed by Naveen Gupta, since he had lent the money only on Sachin Bansal's recommendation.

As per the prosecution Sachin Bansal told Narendra Mann that he too was owed money to the extent of over thirty lakhs by Naveen Gupta.

A criminal conspiracy was hatched by Sachin Bansal and Narendra Mann to eliminate S.N. Gupta, so that the monies invested by S.N. Gupta in the committees run by his father Shiv Charan Bansal and himself, could be retained by them, and he would then be able to pay Narendra Mann the money owed to him by Naveen Gupta. Shiv

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- A Charan Bansal offered to pay for the expenses involved in carrying out the murder of S.N. Gupta.

As per the version of the prosecution, Narendra Mann agreed to the above proposal. He first asked his cousin brother accused - Lalit Mann to carry out the murder of S.N. Gupta by disguising himself as

- B a Sikh. After initially agreeing, Lalit Mann subsequently backed out. Thereafter, Joginder Singh Sodhi, who was running a shop below the house of Lalit Mann, was asked by Narendra Mann to execute the murder of S.N. Gupta, which was agreed by him on payment of Rs. 2 lakhs. Joginder Singh Sodhi was shown the photograph of S.N. Gupta, and the exact location of his house.

- C It is alleged by the prosecution that accused Rajbir Singh, an advocate, had allegedly advised Narendra Mann that he should not use his own licensed weapon for committing the murder, but should use an unlicensed weapon identical to it, since the police would seek to connect the cartridges recovered from the site with the weapon.

- D Pursuant to the above conspiracy, Sachin Bansal took out a photo of S.N. Gupta from his marriage album, and gave it to Narendra Mann. He also showed Narendra Mann the house of S.N. Gupta and informed him of S.N. Gupta's daily routine and further informed him that he receives couriers, packets/letters in connection with his investment in shares.

- E On the date of offence i.e. 21.03.2006, pursuant to the above criminal conspiracy, Narendra Mann borrowed the Getz car from his cousin, and the unlicensed pistol from Shailendra Singh with five cartridges. He then took Joginder Singh Sodhi to the place of occurrence in his Getz car by making him wear the goggles and cap, and gave an envelope to be given to S.N. Gupta. He parked the car near the apartment, and was waiting inside the car, while Joginder Singh went to the house of the deceased – S.N. Gupta. Joginder Singh caused the murder of S.N. Gupta by shooting him at point blank range. Narendra
- F Mann then helped Joginder Singh to get away.

- G 25. As per the version of the prosecution, the incident occurred on 21.03.2006, at about 4:30 p.m. Just prior to the incident at 3:51 p.m., accused – Narendra Mann from his mobile phone bearing No. 9818411470, made a call to the mobile phone of Sachin Bansal bearing H No. 9818119624. After the murder was committed, the accused –

Narendra Mann called the accused – Sachin Bansal at 4:48 p.m. The A call records reveal that the accused – Narendra Mann and Sachin Bansal were in continuous contact with each other, before and after the occurrence of the incident.

26. The prosecution urged that, a *prima facie* case for offences under Section 120B IPC read with 302 r.w. 120B/34 IPC, Section 201 B IPC and Section 25 of the Arms Act was made out against accused – Shiv Charan Bansal, Shailendra Singh, Lalit Mann and Rajbir Malik.

27. The Sessions Court *vide* Order dated 17.03.2008 held:

(i) That on the basis of the material brought on record, and C the circumstances of the case, there was common intention between Narendra Mann and Joginder Singh Sodhi in the act of killing S.N. Gupta. The Sessions Court directed that Joginder Singh Sodhi be charged u/ D S. 302 read with S.34 IPC. Narendra Mann was charged u/S. 302 read with S.34 IPC and for the offence punishable u/S. 201 IPC for causing disappearance of the weapon of the offence after allegedly taking it from the alleged contract killer – Joginder Singh Sodhi. Narendra Mann was further charged u/S. 25 of the Arms Act as he got the firearm and ammunition recovered from the office of co-accused Shailendra Singh. The material on record *prima facie* showed that Narendra Mann, who was holding a licensed firearm, handed over the same to Sachin Bansal along with ammunition, which was got recovered E from the factory of Sachin Bansal. He was also charged F u/S. 29B of the Arms Act.

(ii) The Sessions Court however discharged Lalit Mann of G the alleged Offences u/S. 120B, 302 r.w. S. 34, 201 IPC and u/S. 25 Arms Act, on the ground that the only evidence which the prosecution had been able to place on the file against accused – Lalit Mann @ Nanhe is that he was found travelling in an Esteem car with the accused Narendra Mann on 29.03.2006, which was 8 days after the murder took place. It is the case of the prosecution that initially Narendra Mann had asked Lalit H Mann to carry out the job of murdering of S.N. Gupta.

- A He later backed out of the same. Thereafter, the job of carrying out the murder was assigned to accused – Joginder Singh Sodhi. This would indicate that Lalit Mann had disassociated himself from the alleged conspiracy. The disclosure statements of the accused persons including Narendra Mann and Lalit Mann are not sufficient evidence to connect the accused – Lalit Mann with the crime of killing S.N. Gupta.
- B (iii) With respect to Rajbir Singh the prosecution referred to the disclosure statements made by the accused – Narendra Mann and Rajbir Singh, to show that it was on the advice of Rajbir Singh, that accused Narendra Mann did not use his licensed weapon for the offence. Narendra Mann was further advised by Rajbir Singh, to keep his licensed weapon in the factory of Sachin Bansal, and arrange an unlicensed pistol for the murder. It was further pointed out that at the time of arrest, Narendra Mann was travelling with Rajbir Singh, and that they were in constant touch with Rajbir Singh on the cell phone.
- C The Sessions Court held that the disclosure statements made by the accused merely revealed that Rajbir Singh had tendered advice to Narendra Mann to the effect that he should not use his licensed pistol for carrying out the murder of S.N. Gupta. On the basis of the advice given by Rajbir Singh, accused – Narendra Mann kept his licensed pistol at the factory of Sachin Bansal, and arranged an unlicensed pistol from accused – Shailendra Singh. Narendra Mann was apprehended while he was travelling with Rajbir Singh to the house of Sachin Bansal on 29.03.2006. The mere travelling of Rajbir Singh in a car with Narendra Mann could not be considered to be an offence.
- D The seizure memo of the articles recovered from the car, did not bear the signature of Rajbir Singh. It was not the case of the prosecution that the car either belonged to Rajbir Singh, or that the goods recovered from the car were arranged or belonged to Rajbir Singh. The material placed on the file was not sufficient to frame charges against accused – Rajbir Singh.

(iv) With respect to Shailendra Singh, the Sessions Court A held that the unlicensed pistol along with two live cartridges were recovered from his office on the basis of the disclosure statement made by Narendra Mann. The Sessions Court held that the disclosure statement could not be relied upon as per Section 10 of the Evidence Act. There was no material to hold that Shailendra Singh had knowledge that the firearm that was being handed over to Narendra Mann would be used in the murder of S.N. Gupta.

The Sessions Court charged Shailendra Singh only for the offence u/S. 25 of the Arms Act for keeping an unlicensed firearm in his possession. C

(v) With respect to the accused – Shiv Charan Bansal and Sachin Bansal, the prosecution placed reliance on the statements of Rajesh Gupta s/o the deceased, Naveen Gupta - nephew of the deceased, the statement of Satish Gupta and Suresh Gupta - brothers of the deceased, who disclosed the motive behind the murder on the very date of the murder itself. As per their statements, it was revealed that the deceased S.N. Gupta and his son – Rajesh Gupta, entered into partnerships in the firms M/ s Akash International and M/s Accent Shoes Pvt. Ltd, with Shiv Charan Bansal and his son. The Bansal father-son duo wanted to misappropriate the share of the deceased. The further case brought on record was that the deceased had invested a substantial amount of money in the committees organised by Shiv Charan Bansal, which he was refusing to return. E F

The Sessions Court held that there may be a motive on the part of the accused persons in causing the death of S.N. Gupta, but motive alone was not sufficient to frame charges u/S. 302 IPC.

The Sessions Court discharged Shiv Charan Bansal since the prosecution had collected evidence against him only in the form of disclosure statements from the accused persons after arrest. These disclosure statements are with respect to facts which came to light after the arrest of the accused persons. Section 10 of the Evidence Act does not permit the use of disclosure statements to connect the accused persons with the crime. G H

- A (vi) The Sessions Court held that the prosecution has been able to make out a *prima facie* case to frame charges against accused – Sachin Bansal for the offence u/S. 25 of the Arms Act, since Sachin Bansal got the licensed pistol belonging to accused – Narendra Mann recovered from his factory premises.
- B The Sessions Court held that the prosecution failed to make out a *prima facie* case against accused – Rajbir Singh, Lalit Mann and Shiv Charan Bansal who were discharged.
- C 28. The State filed Crl. Revision Petition No. 335 of 2008 before the Delhi High Court, against the Judgment dated 17.03.2008 passed by the Sessions Court to the extent that (i) the accused – Shiv Charan Bansal, Lalit Mann @ Nanhe and Rajbir Singh were wrongly discharged; (ii) accused – Shailendra Singh and Sachin Bansal were charged only for the offence under S.25 of the Arms Act, instead of S. 302 r.w. S. 120B IPC; (iii) accused - Narendra Mann and Joginder Singh Sodhi
- D were charged under S.302 r.w. S.34 IPC, although they ought to have been charged under S.120B IPC.

The complainant – Kanta Devi filed Crl. Revision Petition No. 191 of 2008 praying for the same reliefs as the State.

- E 29. Accused – Shailendra Singh filed Crl. Revision Petition No. 430 of 2008 and a separate Crl. Revision Petition No. 405 of 2008 was filed by accused – Sachin Bansal challenging the Order of the Sessions Court wherein they were charged under S.25 of the Arms Act. According to them, they ought to have been discharged by the Sessions Court.
- F Accused – Narendra Mann filed Crl. Revision Petition No. 342 of 2008 challenging the Order passed by the Sessions Court wherein he was charged for offences u/S.302 r.w. S.34, 201 IPC and S.25 and S.29(b) of the Arms Act.

- G 30. The High Court *vide* the Common Judgment dated 29.05.2009 held that: (i) Narendra Mann, Sachin Bansal and Joginder Singh Sodhi were to be charged u/S. 302 read with S. 34 IPC read with 120B IPC and S. 25/27 Arms Act and substantively u/S. 120B IPC alone.

- H The Judgment of the Sessions Court ordering discharge of Shiv Charan Bansal, Shailendra Singh, Lalit Mann and Rajbir Singh was affirmed by the High Court.

31. The State and the Complainant – Kanta Devi filed the present Special Leave Petitions to challenge the Judgment and Order passed by the Delhi High Court dated 29.05.2009. Leave to Appeal was granted *vide* Order dated 26.11.2010.

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32. FINDINGS AND ANALYSIS

At the stage of framing charges under S.227 and S.228 Cr.P.C, the Court is required to consider whether there was sufficient material on record to frame charges against Shiv Charan Bansal, Shailendra Singh, Lalit Mann and Rajbir Singh. The prosecution alleged that the offences u/S. 120B, S.302 r.w. S.120B/34, S.201 IPC and S.25 of the Arms Act ought to have been framed.

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I. Scope of Section 227 and 228 of the Cr.P.C.

The Court while considering the question of framing charges under Section 227 of the Cr.P.C has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case has been made out against the accused. The test to determine *prima facie* case would depend upon the facts of each case.

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If the material placed before the court discloses grave suspicion against the accused, which has not been properly explained, the court will be fully justified in framing charges and proceeding with the trial.

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The probative value of the evidence brought on record cannot be gone into at the stage of framing charges. The Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the ingredients constituting the alleged offence.

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At this stage, there cannot be a roving enquiry into the pros and cons of the matter, the evidence is not to be weighed as if a trial is being conducted.

Reliance is placed on the Judgment of this Court in *State of Bihar v. Ramesh Singh*¹ where it has been held that at the stage of framing charges under Sections 227 or 228 of the Cr.P.C., if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused had committed the offence, then the Court should proceed with the trial.

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¹ (1977) 4 SCC 39.

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- A In a recent Judgment delivered in *Dipakbhai Jagdishchandra Patel v. State of Gujarat and Another*² in Crl. Appeal No. 714 of 2019 decided on 24.04.2019, this Court has laid down the law relating to framing of charges and discharge, and held that all that is required is that the court must be satisfied with the material available, that a case is made out for the accused to stand trial. A strong suspicion is sufficient for framing charges, which must be founded on some material. The material must be such which can be translated into evidence at the stage of trial. The veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged at this stage, nor is any weight to be attached to the probable
- B defence of the accused at the stage of framing charges. The court is not to consider whether there is sufficient ground for conviction of the accused, or whether the trial is sure to end in the conviction.

II. Criminal Conspiracy

- The present case is one where the prosecution has alleged that
- D there was a criminal conspiracy to murder S.N. Gupta by all the accused. The crime was not committed at the spur of the moment, but was preceded by meticulous planning where each of the accused have played a separate role to achieve the common illegal object of carrying out the murder of S.N. Gupta.
 - E The essential ingredients of Criminal Conspiracy as per judicial dicta are: (i) an agreement between two or more persons; (ii) 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.

- Reliance is placed on the Judgment of *Ghulam Sarbar v. State of Bihar*³ on this issue, wherein it was held that what is necessary for the prosecution to show is the meeting of minds of two or more persons for doing or causing to be done an illegal act, or an act by illegal means.

- A criminal conspiracy is generally hatched in secrecy, and it is difficult, if not impossible, to obtain direct evidence. Reliance is placed on the Judgment of this Court in *R. Venkatakrishnan v. CBI*⁴. The manner and circumstances in which the offence has been committed,

² 2019 SCC Online SC 588.

³ (2014) 3 SCC 401.

H ⁴ (2009) 11 SCC 737.

and the level of involvement of the accused persons are relevant factors. A
Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in the general conspiracy, to accomplish the common object.

Conspiracy is mostly proved by circumstantial evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused, rather than adopting an approach by isolating the role played by each of the accused. The acts or conduct of the parties must be conscious and clear enough to infer their concurrence as to the common design and its execution. Reliance is placed on the Judgment of *State (NCT) of Delhi v. Navjot Sandhu @ Afsan Guru*⁵. B
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In *Kehar Singh & Ors. v. State (Delhi Administration)*⁶ this Court held that the most important ingredient in the offence of conspiracy is an agreement between two or more persons to do an illegal act. The prosecution will have to rely upon circumstantial evidence. The Court must enquire whether the persons are independently pursuing the same unlawful object or whether they have come together for the pursuit of the unlawful object. The offence of conspiracy requires some kind of physical manifestation of the agreement. However, the same need not be proved, nor is it necessary to prove the actual words of communication. It is sufficient if there is a tacit understanding between the conspirators for the execution of the common illegal object. D
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In cases of criminal conspiracy, better evidence than acts and statements of co-conspirators is hardly ever available.

In the facts of the present case, we find that there is ample material brought on record which creates a grave suspicion about the involvement of the accused viz. Shiv Charan Bansal, Lalit Mann and Shailendra Singh in the murder of the deceased S.N. Gupta. F

III. Shiv Charan Bansal

The evidence produced by the prosecution with respect to the involvement of Shiv Charan Bansal are broadly enumerated as follows: G

- (i) Rajesh Gupta s/o the deceased attributed the murder of his father to Shiv Charan Bansal and his son Sachin

⁵ (2005) 11 SCC 600.

⁶ (1988) 3 SCC 609.

- A Bansal, for misappropriation of the amounts invested by his late father S.N. Gupta in all the committees/chit funds run by the Bansals.
- B Rajesh Gupta further deposed about the business transactions between Shiv Charan Bansal and his son, with the deceased S.N. Gupta in two firms M/s. Accent Shoes Pvt. Ltd. and M/s. Aakash International, where Shiv Charan Bansal had usurped the share of the deceased, and was now trying to take over their factory at Bahadurgarh.
- C (ii) This was corroborated by the statement of the brother of the deceased viz. Satish Gupta which was recorded soon after the murder took place. The said witnesses have made the statements soon after the murder of the deceased.
- D (iii) The statement of the third brother of the deceased viz. Ajit Prasad Gupta's statement was recorded u/S. 164 Cr.P.C. on 01.06.2006 by the Court of the Metropolitan Magistrate. Ajit Gupta disclosed that he knew Shiv Charan Bansal since 10 to 15 years. He stated that he had participated in the committees organised by Shiv Charan Bansal. The committees were organised by Shiv Charan Bansal, and his son Sachin Bansal. There were 70 to 80 committees in a month organised by Shiv Charan Bansal. The deceased S.N. Gupta had invested a substantial amount of money in most of these committees, and was a member of every group. When S.N. Gupta demanded return of the money, Shiv Charan Bansal refused to return the same on one pretext or another, which he learnt when he went to attend the committees.
- E (iv) The statement of independent witness viz. Ashok Kumar Agarwal was recorded u/S. 164 Cr.P.C. on 31.05.2006 by the Metropolitan Magistrate. This witness stated that he had participated in four committees of 10 lakhs each run by Shiv Charan Bansal. He was aware that the deceased S.N. Gupta had invested in the maximum number of committees run by Shiv Charan Bansal, in which his eldest son Sachin Bansal used to help him.

(v) Both the Sessions Court and the High Court have noted A
that all the witnesses have clearly attributed the murder
to Shiv Charan Bansal and his son Sachin Bansal. The
motive of the crime was to misappropriate the
investments made by the deceased in the committees
of Shiv Charan Bansal. Rajesh Gupta has further
deposed that the further circumstance was on account
of the business dealings between the families of the
deceased and Shiv Charan Bansal.

As per the case of the prosecution, the murder of S.N. Gupta B
was contrived by Shiv Charan Bansal and his son Sachin Bansal
with Narendra Mann, and the other co-conspirators being Lalit
Mann who arranged the contract killer – Joginder Singh Sodhi,
Shailendra Singh who provided the weapon of offence which was
recovered from his office, along with live cartridges.

(vi) The contemporaneous Call Detail Records (CDRs) C
between Sachin Bansal and Narendra Mann, who
accompanied Joginder Singh Sodhi – the contract killer,
would constitute strong material for framing the charge
against all the accused.

The murder of S.N. Gupta took place at about 4:30 p.m. Narendra D
Mann from his cell phone bearing No. 9818411470 made a call
at 3:51 p.m. to Sachin Bansal on his cell phone bearing No.
9818119624 prior to the execution of the crime. After the murder
was committed, Narendra Mann called Sachin Bansal on his cell
phone at 4:48 p.m. These call records in quick succession
immediately before and after the murder was committed, lead E
to a grave suspicion about the complicity of these accused. The
Call Detail Records reveal that the accused were in close contact
and communication with each other both before and after the
occurrence.

The I.O. Satyapal Singh, in his deposition dated 08.01.2015, had F
stated that on 09.06.2006, he had obtained the Call Detail Records
of the mobile phones of all the accused persons from the ACP
Office.

We have perused the record of the Sessions Court, and find that G
the Call Detail Records of Shiv Charan Bansal, which was a H

- A crucial piece of evidence was deliberately not placed by the I.O. along with the Charge Sheet. The missing Call Detail Records of only Shiv Charan Bansal creates a strong suspicion against him.
- (vii) The records of the committees run by Shiv Charan Bansal were alleged to have been destroyed. This creates a strong suspicion about the conduct of Shiv Charan Bansal who was running 75 to 80 committees/chit funds at that time. In his disclosure statement dated 26.04.2006, Shiv Charan Bansal stated that he is having all the records of the committees. However, two days later, on 28.04.2006, he changed his version and stated that the committee records have been destroyed by his son Sachin Bansal.
- The prosecution has alleged that the records of the committees were burnt/destroyed by the father-son duo. The destruction of the records of the committees, which would have revealed the substantial investments made by late S.N. Gupta is an incriminating factor.
- (viii) The conduct of Shiv Charan Bansal after the murder was committed, is also of relevance. The police apprehended Sachin Bansal on 29.03.2006 from his factory.
- Shiv Charan Bansal remained absconding after the murder was committed on 21.03.2006, and did not join the investigation despite efforts by the Police. He was apprehended after more than one month on 25.04.2006.
- After the commission of the crime, accused – Shiv Charan Bansal absconded and did not join the investigation. The said circumstance of absconding immediately after the murder of S.N. Gupta was committed, would be admissible as relevant ‘conduct’ u/S. 8 of the Indian Evidence Act.
- The prosecution has made out a strong *prima facie* case and the materials on record are sufficient to frame charges against Shiv Charan Bansal. The Sessions Court and the High Court were not justified in discharging the accused – Shiv Charan Bansal for the offences u/S.302 r.w. S.34, S.120B, S.201 IPC for destruction of evidence.

The materials gathered by the prosecution raise a strong suspicion A
against both Shiv Charan Bansal and his son Sachin Bansal in
hatching the conspiracy for the murder of late S.N. Gupta.

We are surprised that in the case of Sachin Bansal the co- B
accused, the Sessions Court framed charges only u/S. 25 of the
Arms Act, even though there was sufficient material for his
prosecution u/S. 120B r.w. S.302/34 and S.201 IPC.

The High Court *vide* Order and Judgment dated 29.05.2009 C
directed the prosecution to frame charges u/S. 120B r.w. S.302
and S.34 IPC, S.120B r.w. S.25 and 27 of the Arms Act, and u/
S. 120B substantively, against Sachin Bansal, and to conduct the
trial accordingly.

During the pendency of the present appeals, the Sessions Court D
proceeded with the trial of Sachin Bansal under the charges as
directed by the High Court. The Sessions Court *vide* Judgment
and Order dated 04.02.2016, acquitted him primarily on the
ground that the allegations against him were circumstantial in
nature, and there was no direct evidence to prosecute him.

The State and the private complainant have filed Crl. Appeal No. E
1155 of 2017 and Crl. Appeal No. 1154 of 2017 to challenge the
acquittal of Sachin Bansal, which is pending final determination
by the High Court.

IV. Lalit Mann

- (i) The prosecution relied upon the statement of Naveen F
Gupta @ Cheenu son of Suresh Gupta, and nephew of
the deceased. The said witness in his statement u/S. 161
Cr.P.C, which was recorded soon after the murder had
occurred on the same date, stated that Narendra Mann,
Lalit Mann, Sachin Bansal and his friends used to
threaten him over the phone. Naveen Gupta further
stated that these persons also came to his house, and
threatened to kill his family. He further stated that his
father Suresh Gupta, on the advice of the deceased S.N.
Gupta, got a complaint registered at Mangolpuri Police
Station against Lalit Mann and others. It was further
stated that he was sure that his uncle S.N. Gupta was
murdered by Narendra Mann, Lalit Mann, Sachin Bansal
and his friends. G

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- A (ii) The disclosure statement made by Narendra Mann reveals that initially he had asked Lalit Mann to carry out the murder of S.N. Gupta.

The accused – Lalit Mann had full knowledge of the criminal conspiracy hatched to murder the deceased S.N. Gupta.

- B (iii) Soon after the murder took place, Narendra Mann and Lalit Mann were absconding.

Since Lalit Mann did not join the investigation after the commission of the crime, the conduct of the accused in absconding would be admissible as relevant ‘conduct’ u/S. 8 of the Indian Evidence Act.

- C (iv) On 29.03.2006 i.e. eight days after the murder took place, three of the accused viz. Narendra Mann, Lalit Mann and Rajbir Singh were apprehended by the police while travelling in an Esteem car. The police recovered incriminating objects i.e. photo of the deceased which was given to the contract killer for identification, goggles and black cap worn by the contract killer – Joginder Singh to conceal his identity, from the car.

- D (v) The Call Detail Records of Lalit Mann reveal that from his cell phone bearing No. 9810254600, he was in communication with the contract killer Joginder Singh Sodhi on his cell No. 9871791501 prior and subsequent to the commission of the crime.

- E The Courts below were unjustified in not framing the charges u/ S., 302 r.w. S.34, S120B IPC against accused Lalit Mann.

V. Shailendra Singh

- F As per the case of the prosecution, Shailendra Singh provided the weapon of offence. Furthermore, after the crime was committed, Shailendra Singh remained absconding for a period of 75 days.

- G (i) The recovery of the weapon of offence i.e. an unlicensed 7.65 mm bore pistol along with two live cartridges from the office of this accused at A 1/25, Sector 7, Rohini, Delhi creates a strong suspicion of his involvement in the conspiracy to murder late S.N. Gupta.

The office from where the recovery was made admittedly belongs to the wife of Shailendra Singh. This is corroborated by the deposition u/S. 161 Cr.P.C. of Ramesh, an independent witness, a property dealer, who had arranged the purchase of flat No. A 1/35, Sector 7, Rohini, Delhi by Shailendra Singh, which was registered in the name of his wife Pooja Singh. Shailendra Singh used the said flat as his office to carry out his financing business.

(ii) The FSL Report dated 18.10.2006 has certified that the weapon and cartridges used in the murder of S.N. Gupta were recovered from the office of Shailendra Singh.

(iii) The Ballistic Report has certified that the three used cartridges recovered from the site of occurrence, and the lead retrieved from the body of the deceased, matched with the live cartridges recovered from the house of Shailendra Singh and were fired from the unlicensed pistol recovered from house of Shailendra Singh.

(iv) After the commission of the crime, the accused Shailendra Singh was in possession of the weapon of offence, which was lying concealed in his office.

The circumstance of the weapon of offence being found in the custody and possession of Shailendra Singh, would be admissible as "conduct" under Section 8 of the Indian Evidence Act, irrespective of the statements made by the co accused.

The crucial recovery of the weapon of offence from the house of Shailendra Singh, was a very important circumstance in the chain of events, which was sufficient to proceed against him in trial u/S. 302 r.w. S.34 and 120B IPC.

(v) The call detail records produced before the Sessions Court, reveals the communication between Narendra Mann and Shailendra Singh on the date of the murder, which is relevant material as per Section 8 of the Evidence Act.

It is surprising that the Sessions Court and the High Court having accepted the recovery of the unlicensed weapon from the office of Shailendra Singh, charged him only with the offence u/S. 25 of the Arms Act.

A

VI. Rajbir Singh

With respect to the discharge of the accused – Rajbir Singh, the Order of the Sessions Court and High Court is not disturbed, as we find that there is not sufficient material to prosecute him.

B

Narendra Mann was charged by the Sessions Court u/S. 302 r.w. S.34, S. 201 IPC and S. 25 and 29(b) of the Arms Act by the Sessions Court.

C

The Sessions Court *vide* Judgment and Order dated 04.02.2016 acquitted Narendra Mann.

D

The State has filed Crl. Appeal No. 1155 of 2017, and the Complainant – Kanta Devi filed Crl. Appeal No. 1154 of 2017 before the High Court which are pending determination.

VIII. Section 223 of the Cr.P.C. provides that persons accused of the same offence, committed in the course of the same transaction, must be jointly charged and tried.

E

In the present case, on account of the inconsistency in framing charges by the Sessions Court against the six accused, the trial has got truncated. The trial with respect to three accused i.e. Sachin Bansal, Narendra Mann, and the alleged contract killer – Joginder Singh Sodhi has proceeded in the absence of the other three accused viz. Shiv Charan Bansal, Lalit Mann and Shailendra Singh.

F

The present case is one of criminal conspiracy based on circumstantial evidence. For a case of criminal conspiracy to be established, each link in the chain of circumstances would get completed, only if the evidence collected by the prosecution against all the accused was taken into consideration holistically.

G

Since the trial in the present case has got truncated, it is necessary that the trial of the remaining three accused proceeds forthwith in accordance with law.

H

With respect to the other three accused i.e. Sachin Bansal, Narendra Mann and Joginder Singh the trial was conducted in the absence of the other three alleged co-conspirators. The Order of acquittal with respect to Sachin Bansal and Narendra Mann is pending before the High Court.

S.386 Cr.P.C. defines the powers of the appellate court in dealing with appeals. Clause (a) of S.386 Cr.P.C. is restricted to the powers of the High Court since an appeal against an Order of acquittal lies to the High Court. The appellate court may direct the accused to be re-tried, not only when it deals with an appeal against acquittal, but also when it deals with an appeal against conviction. Under clause (a) the High Court may reverse the Order of acquittal and direct that further enquiry be made, or the accused may be re-tried, or may find him guilty and pass sentence thereon. Reliance is placed on the judgment of this Court in *Isaac alias Kishore v. Ronald Cheriyan & Ors*⁷. A

IX. As an appellate Court, the High Court may take further evidence while considering the Appeals u/S.391 Cr.P.C, if it is considered necessary, and take additional evidence on record. The High Court may also permit recording of statements u/S.313 Cr.P.C, if considered necessary, as held by this Court in *Alister Anthony Pareira v. State of Maharashtra*⁸ and in *Asraf Ali v. State of Assam*.⁹ B D

X. The High Court may take up the pending appeals in the case of Sachin Bansal, Narendra Mann and Joginder Singh Sodhi, after the conclusion of the trial of Shiv Charan Bansal, Lalit Mann and Shailendra Singh, the remaining accused by the Sessions Court in the present case. C E

XI. Conclusions & Directions: -

1. The Criminal Appeal filed by the State of NCT of Delhi being Crl. Appeal No. 2248 of 2010, and the private Complainant – Kanta Devi being Cr. Appeal No. 2247 of 2010 are allowed in Part. F

We direct the Additional Sessions Judge, Rohini Courts to proceed with the trial in accordance with law in Sessions Case No. 6/2007 arising out of FIR No. 200/2006 dated 21.03.2006 with respect to the following accused: - G

- a. The Additional Sessions Judge, Rohini Courts, Delhi is directed to frame charges against Shiv Charan Bansal

⁷ (2018) 2 SCC 278

⁸ (2012) 2 SCC 648

⁹ (2008) 16 SCC 328

- A u/S. 302 r.w. S.34 IPC and S. 120B, and S.201 IPC and proceed with the trial in accordance with law.
- b. We direct the Additional Sessions Judge, Rohini Courts, Delhi to frame Charges against Lalit Mann u/S. 302 r.w. S.34 IPC and S.120B IPC and proceed with the trial in accordance with law.
- B c. We direct the Additional Sessions Judge, Rohini Courts, Delhi to frame charges against Shailendra Singh u/S.302 r.w. 34 IPC and S. 120B IPC, and S. 25, 27, 54 and 59 of the Arms Act.
- C 2. Let a copy of this Judgment be sent to the Additional Sessions Judge, Rohini Courts, Delhi for conducting the trial against the aforesaid accused in Sessions Case No. 6/2007 arising out of FIR No. 200/2006.
- D 3. We direct the Additional Sessions Judge, Rohini Courts, Delhi to fix a time schedule, and proceed with the trial on a day to day basis, and conclude the same preferably within a period of six months from today.
- E 4. The Additional Sessions Judge, Rohini Court, Delhi is directed to report the progress of the case to this Court after three months.
- F 5. Let a copy of this Judgment be also forwarded to the High Court and placed in the file of pending Crl. Appeal Nos. 1155 of 2017 and 1154 of 2017.
6. We affirm the Judgment of the High Court qua the acquittal of Mr. Rajbir Singh Malik @ Raju – Accused No.3.

Devika Gujral

Appeals partly allowed.